



CHAPTER 1

Introduction to Real Estate

I. California's Real Estate Market

A. CALIFORNIA DEPARTMENT OF REAL ESTATE (DRE)

In California, real estate licensing laws are regulated by the Department of Real Estate (DRE), which is headed by the Real Estate Commissioner. The California DRE is widely recognized as a progressive organization whose example is followed by other states. The most current and accurate information from the DRE can be found at their website: www.dre.ca.gov.

B. HIGH COST OF REAL ESTATE

Due to increased job opportunities, higher birthrates, immigration, and migration, California's population growth rate is expected to practically double that of the national average in the next decade. For a variety of reasons, the number of new houses and condominiums being constructed is low. As a result, demand is already outpacing supply.

With the state's abundance of community colleges and universities generating so many educated professionals, is it any wonder the personal incomes in California are the envy of the rest of the nation?

California's remarkable expansion is due no doubt to our dominance in the areas of: 1) high technology and biotechnology; 2) foreign trade; 3) tourism and entertainment; 4) agriculture; as well as 5) professional services. Projections indicate that California will nearly double the national average in: 1) population increases; 2) job creations; 3) income increases, and 4) household formation. This has created a demand for housing, and a scarcity of buildable land close to urban areas, which means the price of real estate will continue to be higher than almost any other state, regardless of any fluctuations in the market.

A home is an expensive venture that includes a home loan payment. This payment usually equals 25 percent to 28 percent of the wages earned monthly by the homeowner, although this percentage may be higher in California. The monthly payment is only part of owning a home. Property taxes, fire insurance, repairs, and furnishings are expenses that will further increase the monthly cost of maintaining a home.

The credit crunch of 2007-2009 offered buyers lower priced homes and potential bargains for investors.



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CHAPTER OUTLINE

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California Department of Real Estate (DRE)

The California Department of Real Estate (DRE) is on the Internet at **www.dre.ca.gov**. Their website provides all the information you need to know about obtaining a license, for example, the latest educational requirements needed to take the salesperson's exam. We advise you to look at the section called "Examinees."

The DRE is constantly improving their website and adding valuable services via the Internet. Now, not only can you research what's new at the DRE and access valuable information on most subjects involving real estate, you can conduct DRE licensing transactions online as well! The following transactions can now be performed online, using the "eLicensing" system:

1. Acquire Testing Schedules
2. Check Test Results
3. Salesperson and Broker License Renewals
4. File Mailing Address Changes
5. Salesperson Changes of Employing Broker
6. Continuing Education Extension/Exemption Request

It doesn't get much easier than this! Check out DRE's website for further improvements!

www.dre.ca.gov (Your main source of information)

California Home Thursday, June 21, 2007

Welcome to *California*

Department of Real Estate

Check License Status

eLicensing
online system

▶ START

Examinees and Licensees:

Use eLicensing for expedited processing of:

- Examination services
- Mailing address changes
- License renewals
- Salesperson additions/changes of employing broker
- Broker certification of salesperson employment
- Broker discontinuation of salesperson employment
- Duplicate license requests
- Additional services

GOVERNOR Schwarzenegger
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Dale E. Bonner
BTH Agency Secretary

Real Estate Commissioner Jeff Davi

California



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C. REAL ESTATE: A PROFITABLE PROFESSION

With the high cost of real estate comes the potential for high profits in the selling of real estate. A purchase as important as a home requires a great deal of knowledge and usually entails the services of a real estate professional. Because brokers and real estate salespeople are paid by commission, the higher the cost of housing, the higher the price of their services. A **COMMISSION** is an amount paid, usually as a percentage of the selling price, to a broker for services. The broker is responsible for paying his or her salespeople their part of any commissions.

The maximum commission that can be charged by a real estate broker in the sale of residential income property is negotiable between the principal and broker.

Real estate brokers in California normally receive around five or six percent of the sales price of a home as their commission. For example, if a home sells for \$500,000 and the broker involved in the sale receives a 6 percent commission, he or she would collect a total of \$30,000 ($\$500,000 \times .06$).

As you can see, the real estate business is a profitable one. It requires a person who is helpful, ambitious, willing to work and familiar with computer programs and the Internet. There is always a need for knowledgeable, well-trained salespeople and professionals in related fields, such as loan brokers, appraisers, and escrow officers.

II. Historical Influence



www.ca.gov
Welcome To California
www.calhist.org
California History

A. CALIFORNIA'S COLORFUL HISTORY

California's colorful history gives a unique flavor to its customs and lifestyles. The first Europeans to actively settle in California were Spaniards. In 1769, they began the famous mission system along El Camino Real, now known as U.S. Highway 101 and California 1. They established *fortified trading posts*, called **PRESIDIOS**, at San Diego, San Francisco and Monterey.

The *first cities*, called **PUEBLOS**, were Los Angeles and San Jose. Spain's king granted vast ranchos to favored civil and military officers. Many streets, towns and landmarks in California still bear their names. The state's distinct architectural style, the rambling, cool, thick-walled adobe structure with red tile roof, dates from the Spanish period.

In the early 1800s, California became a self-governing province of newly independent Mexico. The ruling government attempted land reform, breaking up the huge Spanish ranchos and giving ownership to Mexican citizens. This disturbed the large American population in California and led to war with Mexico.

The United States' war with Mexico ended on February 2, 1848, with the **Treaty of Guadalupe Hidalgo**. As part of the settlement, the United States purchased from Mexico more than 500,000 square miles of land, including the present states of Nevada, Utah, New Mexico, Arizona, and California. In an extraordinary example of political-economic timing,

Mexico deeded over all rights to this province within weeks of John Sutter's explosive discovery of gold near Sacramento.

The **Gold Rush** brought thousands of new citizens swarming to the west coast. Many settled permanently, founding towns and businesses, and expanding the already well-established orchards, vineyards and cattle ranches. Foreign trade crowded the coastal cities with goods and increased immigration. **California achieved full statehood on September 9, 1850**, and from that time on the state's population increased until it could boast of having the largest population in the nation (over 12.5%). The newly established legislature adopted a land ownership recording system that recognized and protected the early land grants. This recording system provides an interesting and complete history of the ownership of California lands and their subsequent division and subdivision.

38 million Californians now make up 12.5% of the U.S. population.

In 1917, California passed the first real estate licensing law in the nation. Although this first law was declared unconstitutional, the Real Estate Act of 1919 was upheld by the State Supreme Court. Licensing laws are a reasonable exercise by the state to regulate the conduct of its citizens in the interest of the public good.

III. Real and Personal Property

A. OWNERSHIP IS A BUNDLE OF RIGHTS

"Property" is defined as the "rights and interests that a person has in the thing owned."

Commonly referred to as a "bundle of rights," some of these rights include possession, enjoyment, control, and disposition (see **Figure 1-1** for more details). There are two types of property: **Real Property** (immovable) and **Personal Property** (movable), formerly called "chattel" or "chattel real."

Real property is "immovable" by law.

Figure 1-1

OWNERSHIP IS A "BUNDLE OF RIGHTS"



Bundle of Rights Theory

The bundle of rights theory views property ownership rights as a large bundle of sticks, where each "stick" is a property right. Individually, these rights represent various, specific forms of ownership; the more of these you hold, the more completely you own the property. So if you lease the property to someone, you give up one of your "sticks" (the right of possession). The basic rights of ownership include the rights of:

1. **Possession** – the right to occupy, rent, or keep others out.
2. **Enjoyment** – the right to "peace and quiet" without interference from past owners and others.
3. **Control** – the right to physically change or keep the property the way you like it.
4. **Disposition** – the right to transfer all or part of your property to others as you see fit.



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B. REAL PROPERTY

REAL PROPERTY is the right or interest that a person has in the land or anything attached to the land.

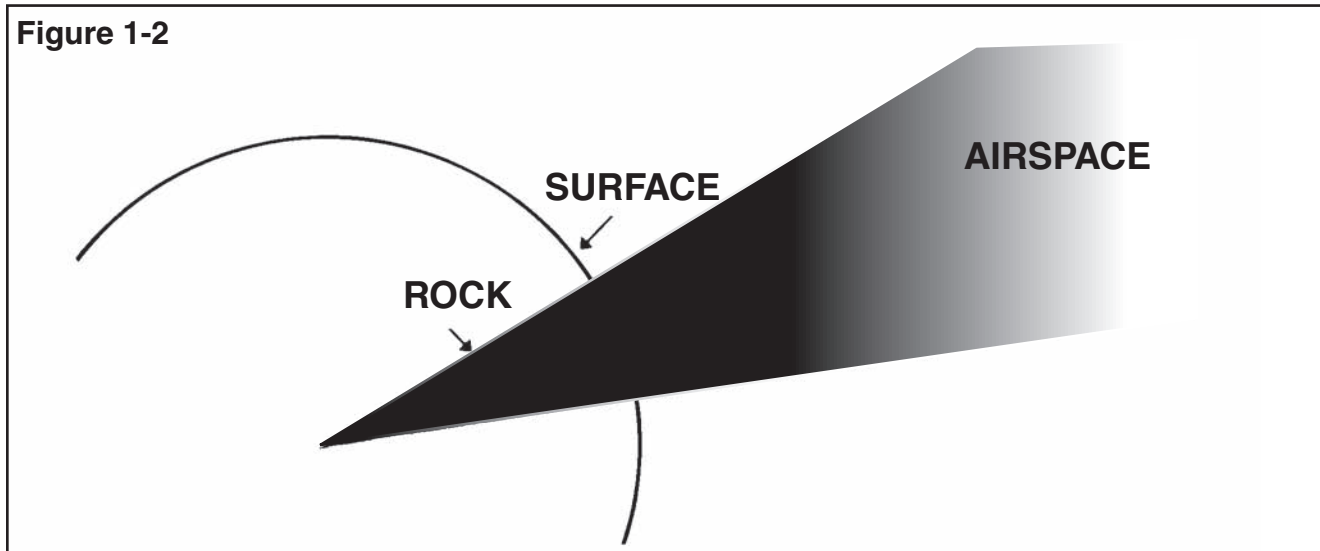
Real property is legally defined as:

1. Land
2. Anything permanently attached or affixed to the land
3. Anything incidental or appurtenant to the land
4. Immovable by law

1. Land

LAND OWNERSHIP is commonly thought of as owning the surface of the earth; in other words, the ground we walk and build upon. But ownership also gives us rights to the space that is above our land and extends below our feet to the center of the earth, as **Figure 1-2** illustrates.

Figure 1-2



An **AIRSPACE RIGHT** is the right to the use of the airspace above the surface of the earth. It is real property. In reality, the courts have restricted, to a reasonable height, the right of the property owner to use this space. An example for allowing only reasonable use of airspace is the need for airlines to have public “air highways” to provide us with transportation.

This airspace above the ground can be leased or sold in the same manner that mineral rights can be leased or sold. Airspace is an effective way to fully utilize the prime construction sites in many of our larger cities by building “up” instead of “out.” An example of effective airspace use is storage space leased under our freeway overpasses by Caltrans, our state highway maintenance division.

Condominiums are another good example of airspace use. Inside a condominium, one only owns the airspace (area within the finished walls). The owner also owns a fractional share of the entire project (common area). Each owner may use the airspace within his or her unit in any manner he or she wishes, unless it violates the bylaws of the homeowner’s group.

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Generally, all that is beneath the surface of the earth belongs to the owner as **real property**. **MINERAL RIGHTS** are the rights to unmined minerals (solids), such as gold, silver, and borax, that are part of the real property, but can be removed. However, there are some exceptions: oil and other minerals can be claimed by the owner as personal property when removed from the ground. This is because they are considered, by law, to be “fugitive (meaning moving) substances.” As an owner, you may sell your mineral rights below 500 feet; or you may exercise your “right of surface entry” above the 500-foot level.

A **RIPARIAN RIGHT** is the right of a landowner to the reasonable use of moving, free flowing water on, under, and adjacent to his/her land (like a river or stream within the watershed), provided that its use does not infringe on the rights of any neighboring landowners.

Riparian rights can be severed by condemnation or prescription.

A **LITTORAL RIGHT** is the right of a landowner to the reasonable usage of a nonflowing body of water (with a shoreline) abutting his/her land.

Riparian rights refer to moving water (rivers and streams), and littoral rights refer to bodies of water with a shoreline (oceans and lakes). Remember “R” for rivers and “L” for lakes.

APPROPRIATION OF WATER is the private taking and use of water flowing on the public domain from its natural course.

Riparian rights include the right to reasonably “appropriate” water as needed.

PERCOLATING WATER refers to underground water not found in a defined channel (natural water course). A spring that originates underground and seeps up through the soil is an example of percolating water. A landowner has the right, in common with others, to take his/her share of underground (percolating) waters for beneficial use. The **ALLOCATION** (taking) by the state (not city or county) of surplus underground water for beneficial use of non-owners is also referred to as **APPROPRIATION**.

POTABLE WATER refers to water that is suitable for human consumption.

SURFACE WATER RIGHTS prohibit the diversion of runoff from rain unless confined to a channel (river or stream) to the property of another. An owner can use reasonable means to protect against floodwater, but not at the expense of his/her neighbor.

2. Attached to the Land (“Improvements”)

Anything attached to the land, such as buildings, fences, walls, walks and shrubs, are called **IMPROVEMENTS**, and become **real property** when they are permanently incorporated, integrated in, affixed or attached to the land. Buildings that rest on the land or anything attached by cement, nails, screws, and plaster are examples of real property, as is a **bearing wall** that supports the upper part of a structure.

Real property is the land and anything attached to the land (called “improvements”).

3. Incidental or Appurtenant to the Land

Anything that is incidental or appurtenant to the land is real property. **APPURTENANT** means ownership transfers with the land automatically without the need of a separate conveyance



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(runs with the land). Certain things that are a part of the land must be sold with the land or else the usefulness of the land is reduced.

For example, **MUTUAL WATER COMPANIES** are organized by water users in a given district to supply ample water at a reasonable rate. They are usually corporations in which the owners of each parcel of land are given a share of stock. The stock is appurtenant to the land; that is, each share of stock is attached to the land and cannot be sold separately.

Easements that allow the use of someone else's land, such as a driveway to enter your land, also go with the land being sold if it is the only way to access the land.

Stock in a mutual water company is real property and appurtenant (runs with the land) and thus automatically transfers to the buyer.

4. Immovable by Law

That which by law is considered immovable is **real property**. Under California law, established crops and trees are a part of the land. The only exception is when a contract of sale for these items is made before the land is sold. If you have such a contract, it is a good idea to record it at the appropriate county recorder's office to assure that everyone has notice of the sale.

Natural growth (vegetation attached by roots) is real property as are cultivated crops (like unpicked fruit or corn) until they are severed, mortgaged, or sold.

C. PERSONAL PROPERTY

PERSONAL PROPERTY is any property that is movable and cannot be properly classified under the definition of real property. Items such as clothes, furniture, and automobiles are tangible and easily movable. Personal property can also be documents that represent value, such as stocks, bonds, or leases.

Minerals, oil, and gas, when extracted, are also considered personal property.

EMBLEMENTS are planted growing crops that are cultivated annually by a tenant farmer on leased land. Unlike landscaping, these crops belong to the tenant even after the expiration of the lease.

If previously contracted for sale, the "fruit" of a commercial orchard may be personal property, but the trees upon which it grows are real property.

When buying personal property, your receipt is called a "**Bill of Sale**." The Bill of Sale states that the goods have been paid for and that no outstanding loans exist on the personal property. It is always considered good practice to obtain a Bill of Sale. **Figure 1-3** is an example of a Bill of Sale.

The ownership of personal property is transferred with a "bill of sale." An instrument used to secure a loan on personal property is called a "security agreement."

D. FIXTURES

FIXTURES are items of personal property that are attached to, or incorporated into, the land in such a manner as to become real property. The courts use these five tests to determine if an item is a fixture:

Figure 1-3

TRANSFERS TITLE OF PERSONAL PROPERTY

BILL OF SALE		
In consideration for the sum of	<u>Three hundred fifty and no/100</u>	
<u>\$350.00</u>	as payment in full is hereby acknowledged from	
<u>(Mr John Q. Smart</u>	<u>for the purchase of</u>	<u>(a Maytag washer</u>
<u>and dryer, serial numbers #H02257 and #D376240).</u>		
Executed on <u>April 19, 20XX</u>		
in the county of <u>Sacramento</u> California.		
<u>Robert Seller</u>		
Signature of Seller		

- M** 1. Method of attachment
- A** 2. Adaptability
- R** 3. Relationship of the parties
- I** 4. Intention
- A** 5. Agreement

We sometimes use an acronym
(in this case, **MARIA**) to help
you remember!

1. Method of Attachment

If an item can be removed by simply being unplugged, it is probably personal property. On the other hand, if it is attached by cement, plaster, screws, nails or plumbing, it is probably real property. If removal of an item would leave permanent damage or an unusable area, it is surely real property. A rug lying in a living room would be considered personal property; carpet affixed to the floor would be considered real property.

Cost and time installed are NOT tests in determining if something is a fixture (real property).

2. Adaptability

The adaptability of personal property refers to ordinary use in connection with the land. If property is well adapted for the land or building, it is probably a fixture.

3. Relationship of the Parties

If a fixture is not mentioned in a contract, and is affixed to the property, most courts will give the seller the benefit of the doubt. A refrigerator that is just plugged in would be considered personal property and would remain with the seller. To protect yourself, any questionable



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fixtures should be mentioned in the purchase agreement. **Real estate salespeople remember: your client should secure a bill of sale for personal property items.** In the case of a tenant and landlord, the court usually rules in favor of the tenant. There are, however, no set rules. A court decision is dependent upon the facts of each individual case.

4. Intention

If you plan to remove an item of personal property, you may not permanently attach it to the land.

5. Agreement

Disputes between buyers and sellers often arise regarding what items remain with the property. It is advisable to secure, in writing, any personal property that you want to remain as personal property. If you are buying a house, list all items you want to accompany the house, such as light fixtures, drapes or a fireplace screen. If you are selling, list only the items that will remain with the house. Remember: if in doubt, put it in writing!

Any item can be specifically identified as being included or excluded as part of the sale. It is advisable to identify, in writing, any personal property that is to be included as part of the sale.

E. TRADE FIXTURES (Always Personal Property) (Removable – Exception to the Rule)

TRADE FIXTURES are personal property used in the normal course of business, such as shelving or refrigeration units. A tenant may remove any trade fixture he or she installed provided the real property is left in the same condition as he or she found it. In this sense, trade fixtures are an exception to the rules of personal property.

A “bill of sale” transfers trade fixtures because they are personal property.

IV. Methods of Land Description

In California, every parcel of land must be properly described or identified. If the property is to be sold, financed or leased, a recognized legal description is required. The following three methods are accepted as means of property identification.

- A. Metes and Bounds (Surveyor’s Maps – Irregular Parcels)
- B. Sections and Townships (U.S. Government Survey – Rural)
- C. Lots, Blocks, and Tracts (Recorded Subdivision – Cities)

The legal description of a property is the minimum legal description of real property that appears in a listing.

A. METES AND BOUNDS (Surveyor’s Maps)

METES AND BOUNDS (measuring boundaries) is the method of identifying (describing) property by its boundaries, distances, and angles from a given starting point. In the past, surveyors often used natural objects as a starting point in their descriptions. A *MONUMENT* is a fixed

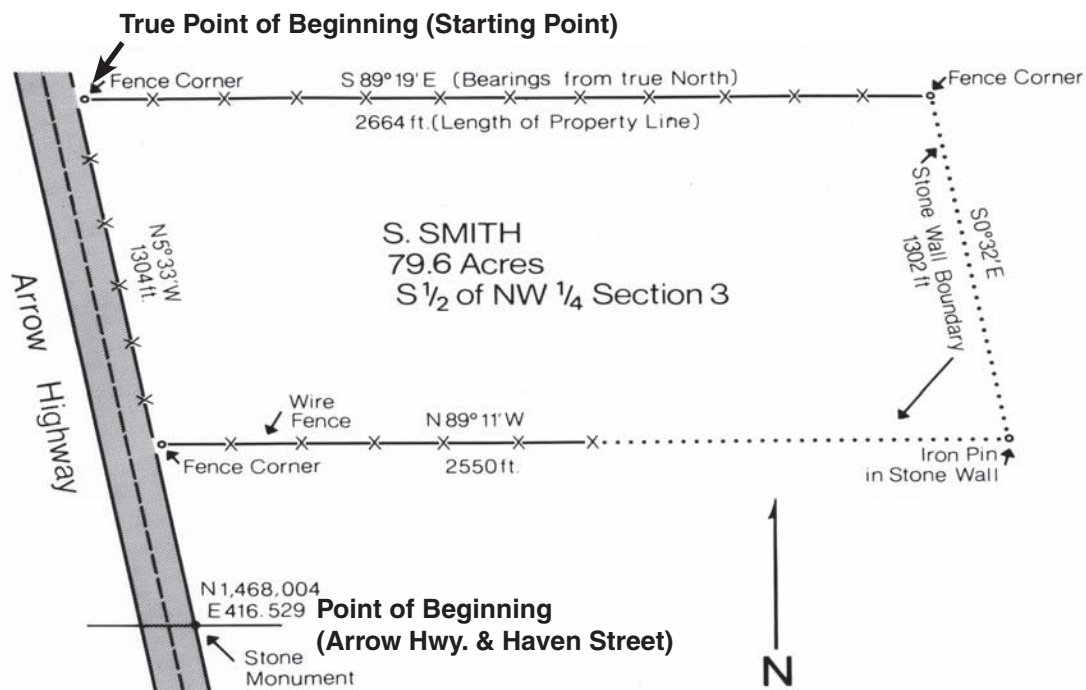
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object and point set in the earth by surveyors to establish land locations. An outdated surveyor's report might read:

"Starting at the old oak tree at the stream, go 300 feet north along the river bed, then make a 90 degree right turn and proceed 100 feet. . ."

The weakness in this type of description is that when natural objects are used as starting points, there is a chance that time, or man, may move or destroy these objects. Modern day surveying is a complicated method of property description better left to the professionals. It is also unnecessary for the average real estate salesperson to study this method in depth, but a basic working knowledge can be helpful. **Figure 1-4** is an example of how a simple surveyor's report might look.

Figure 1-4



B. SECTIONS AND TOWNSHIPS (U.S. Government Survey)

The United States Government Survey system was established to identify all public lands by the use of "base lines" and "meridian lines" starting from a precise surveying point. California has three principal base and meridian line intersections (see **Figure 1-5**):

1. **Humboldt Base Line and Meridian** in Northern California;
2. **Mt. Diablo Base Line and Meridian** in Central California; and
3. **San Bernardino Base Line and Meridian** in Southern California.

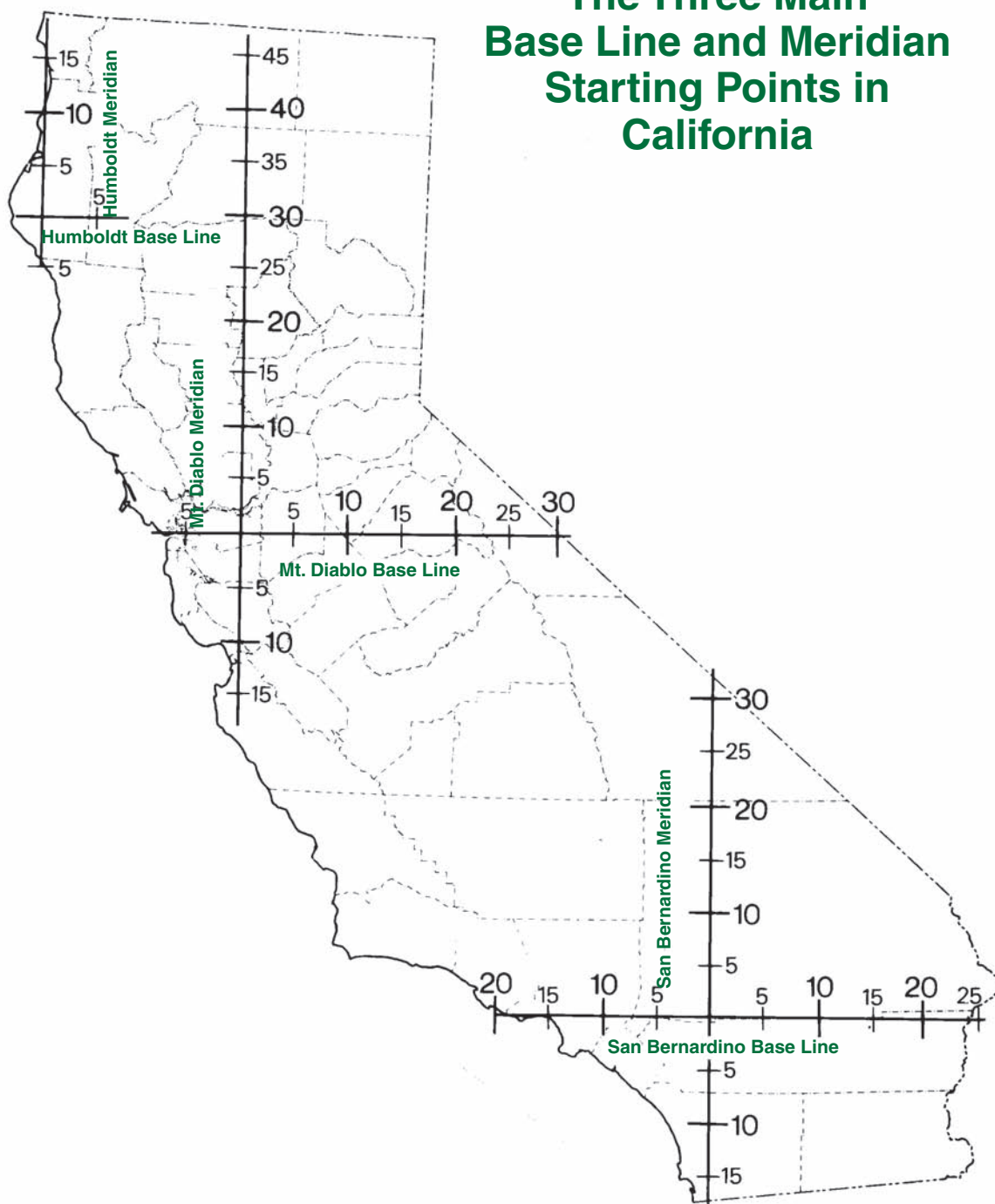
From these three starting points, all of California may be described using sections, townships and ranges to define any given parcel.



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Figure 1-5

The Three Main Base Line and Meridian Starting Points in California



1. Base Lines and Meridian Lines

A **BASE LINE** is a horizontal line that **runs east and west** from any one of three starting points in California. Each base line is marked in six-mile increments. Every six-mile increment is called a range and each range is six miles in length. It is possible to move east or west a designated number of ranges from any starting point.

MERIDIAN LINES are vertical lines that **run north and south** from any one of the three starting points in California. Meridians are also marked off in increments of six miles each, but each six-mile increment north or south on a meridian is called a township or tier.

2. Tiers, Ranges, and Townships

Each rectangular survey grid consists of a series of lines that run parallel to the principal meridian and the base line, at intervals of six miles. The east-west lines (running parallel to the base line) are called **TIER LINES**. The north-south lines (running parallel to the principal meridian) are referred to as **RANGE LINES**.

Township lines divide the land into a series of east-west strips, called **TIERS**. Range lines divide the land into north-south strips called **RANGES**. Where a tier intersects with a range, the result is a six-mile by six-mile square of land known as a **TOWNSHIP**. Thus, each township contains 36 square miles. Townships are the main divisions of land in the rectangular survey system. Each township is identified according to its distance from the principal meridian and base line.

The location of any township is determined by its distance from the nearest base line and meridian line. For example, see **Figure 1-6** to determine the location of a township northeast of the San Bernardino Base Line and Meridian (T. 4N, R. 3E). The following steps are used:

First, move east along the San Bernardino Base Line three ranges. This is the range located between the 2nd and 3rd range lines east of the San Bernardino Meridian. Second, move north from the San Bernardino Base Line four tiers (townships). This is the township located between the 3rd and 4th tier (township) lines north of the base line.

a. Reading Tier (Township) and Section Descriptions

The above description would be written:

T. 4N, R. 3E San Bernardino Base Line and Meridian.

In this form “R” represents the word range and “3E” tells you to move three ranges east of the meridian. Likewise, “T” means township (a tier), and “4N” tells you to go four townships (tiers) north of the San Bernardino Base Line.

To locate a property, work backwards on the description. When reading a description, read it from right to left. A verbal interpretation of our above description would read: “Starting from the San Bernardino Base Line and Meridian, go three ranges east and four townships north.” You have located the township in which the property is located.



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Figure 1-6

Tiers, Ranges, and Townships

				Fig. 1-7	Tier 4 North
					Tier 3 North
					Tier 2 North
					Tier 1 North
San Bernardino		BASE LINE			Tier 1 South
	Range 1 West	Range 1 East	Range 2 East	Range 3 East	Range 4 East

6 Miles x 6 Miles

MERIDIAN LINE

N

3. Sections (A Section is One Square Mile)

Each township is divided into 36 sections. A *SECTION* is one square mile of land consisting of 640 acres. There are 36 sections in a township.

A section contains 640 acres; 1/2 section, 320 acres; 1/4 section, 160 acres.

These sections are numbered in sequential order starting at the upper right-hand corner. Since each township is six miles square and consists of 36 sections, each section measures one mile square (see **Figure 1-7**).

Each section measures one square mile and consists of 640 acres. A section can be broken down into halves or quarters (see **Figure 1-8**).

a. Section Problem

The SW $\frac{1}{4}$ of the NW $\frac{1}{4}$ of section 11 sells for \$800 per acre, while the S $\frac{1}{2}$ of the NE $\frac{1}{4}$ of Section 12 sells for \$500 per acre. What is the difference in the values of the two parcels?

b. Section Answer

1 section = 640 Acres

NW $\frac{1}{4}$ of Section 11 = 160 acres

SW $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 11 = 40 acres

40 acres x \$800/acre = \$32,000

NE $\frac{1}{4}$ of section 12 = 640 acres x $\frac{1}{4}$ = 160 acres

S $\frac{1}{2}$ of NE $\frac{1}{4}$ of section 12 = 160 acres x $\frac{1}{2}$ = 80 acres (continued on page 16)

Figure 1-7 Township is divided into 36 sections

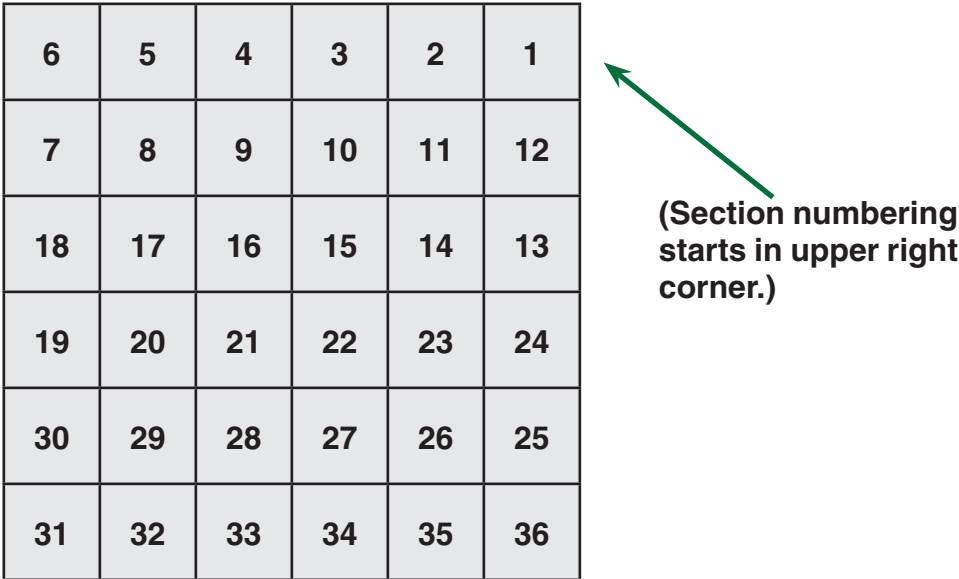
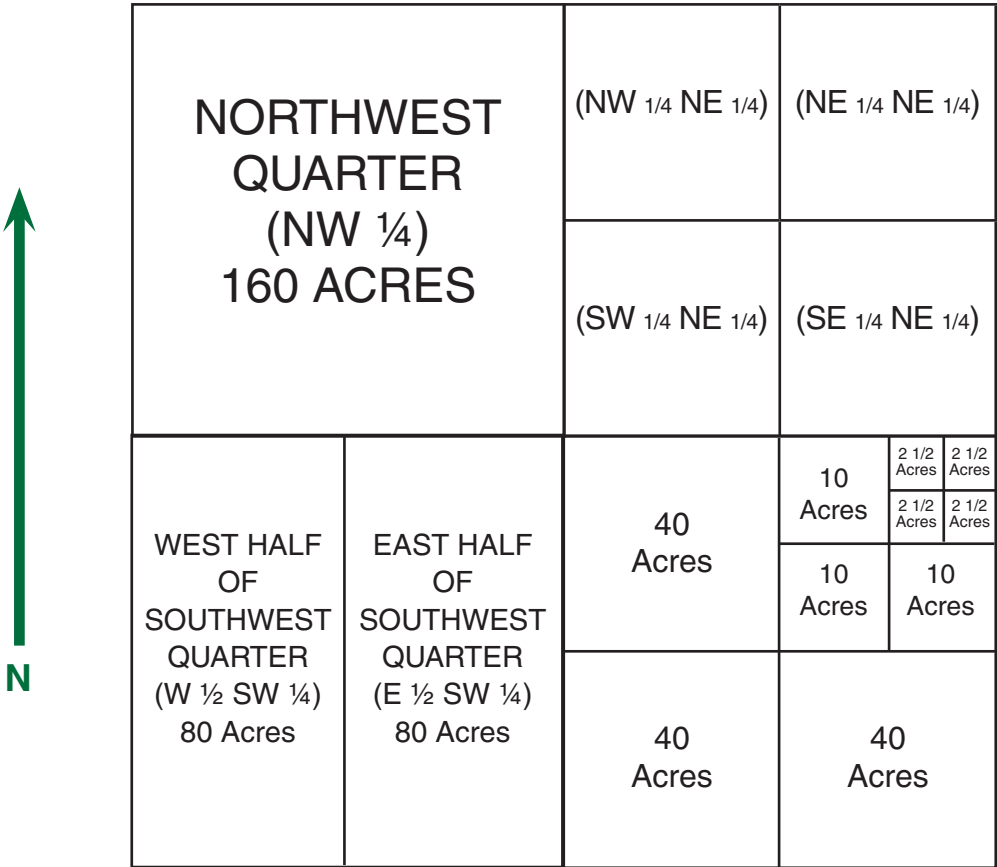


Figure 1-8 Section by acres





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$$\begin{aligned} 80 \text{ acres} \times \$500/\text{acre} &= \$40,000 \\ \$40,000 - \$32,000 &= \$8,000 \text{ difference} \end{aligned}$$

Work backwards and multiply the denominators.

C. LOTS, BLOCKS, AND TRACTS (Recorded Subdivisions)

In California, subdivisions are granted by the Department of Real Estate. The subdivision map, however, is approved by the county or city in which the property is located.

The approved subdivision map is recorded at the County Recorder's Office, and given a book and page number. Once it is recorded, all future transactions can be referenced to that map. *This subdivision map is also referred to as a PLAT MAP.* As an example, **Figure 1-9** is a description of a home located in Venice, California.

See **Figure 1-10** for math problems and **Figure 1-11** for a handy reference table.

Figure 1-9

Short Line Beach Subdivision No. 2



LOT 22 in BLOCK 21 of Short Line Beach Subdivision No. 2, as per map recorded in Book 4, Page 42 of Maps, in the office of the County Recorder of Los Angeles.

Figure 1-10

Doing the Math – Acres and Area

An **ACRE** is an area of land that contains 43,560 square feet. So, if the area of a lot has more than 43,560 square feet, there is more than an acre of land. On the other hand, if there is less than 43,560 square feet in a lot, it is smaller than an acre.

AREA is a definite amount of space within a shape. In America, area is usually measured in square feet, but may also be measured in square yards or square meters in other parts of the world. Most test questions about area refer to a rectangular or square shape. The area of a rectangular or square shape is obtained by multiplying length x (times) width. The answer is in square feet. The area of a square lot 100 feet x 100 feet is 10,000 square feet.

Example (1): How many acres is a parcel of land that measures 330 feet by 660 feet?

Answer:

$$\begin{array}{rcl} \text{Area} & = & \text{Length} \times \text{Width} \\ 217,800 & = & 330 \text{ feet} \times 660 \text{ feet} \end{array}$$

Note: 1 acre = 43,560 square feet

$$\frac{217,800}{43,560} = 5 \text{ ACRES (Round if necessary)}$$

Example (2): If an acre is divided into four equal lots, with each lot placed parallel to the other and having a depth of 240 feet, what is the width of each lot?

Answer:

$$\begin{array}{rcl} \text{Area} & = & \text{Length} \times \text{Width} \\ 43,560 & = & 240 \text{ feet (x 4 lots)} \quad \times ? \text{ feet} \\ 43,560 & = & 960 \text{ feet} \quad \times ? \text{ feet} \end{array}$$

$$\frac{43,560}{960} = 45.375 \text{ feet wide (Round to 45.4 feet wide)}$$

See Chapter 15 (Real Estate Math) for more problems.



CHAPTER 1

Figure 1-11

Reference Table

One **ACRE** is 43,560 square feet; 4,840 square yards.

One **SQUARE ACRE** is 208.71 feet on each side, but this number is generally rounded off to 209 feet.

One **MILE** is 5,280 feet long.

One **SQUARE MILE** contains 640 acres.

One **SECTION** is one mile square, containing 640 acres.

One **TOWNSHIP** (standard) is six miles square (36 square miles).

One **COMMERCIAL ACRE** is an acre minus any required public dedications.

One **ROD** is 16.5 feet long (5.5 yards). There are four rods, or 66 feet, to one chain, and 320 rods to a mile.

V. CHAPTER SUMMARY

In California, real estate licensing laws are regulated by the **Department of Real Estate (DRE)**. Commission rates are fully negotiable between broker and buyer/seller, with the broker responsible for paying his or her salespeople their part of any commission.

California was purchased by the United States from Mexico as part of the **Treaty of Guadalupe Hidalgo** in 1848, just weeks before the discovery of gold by John Sutter, and became a state on **September 9, 1850**. California's Legislature passed the nation's first real estate licensing law in 1917.

Real property is generally immovable, passed by deed, and includes the right or interests in: 1) the land; 2) anything permanently attached or affixed to the land; and 3) anything incidental or appurtenant to the land. Anything attached to the land, like fences, walls, etc., become real property when they are permanently incorporated or integrated in, affixed, or attached to the land (called **improvements**). Land ownership is not only the surface of the earth but the **airspace** above it and that which is below, like mineral rights. Real property can be thought of as a **bundle of rights**, which includes the rights of possession, enjoyment, control, and disposition.

Personal property is movable, like a refrigerator or washing machine, but can include **emblems** (annually harvested crops) and some substances beneath the land, like oil and minerals when they have been removed from the land.

Anything that is **appurtenant** to the land means it is transferred with the land (runs with the land). An example is stock in a mutual water company. (Water suitable for drinking is referred to as **potable water**.) **Title** to real property is passed with a **deed**, while title to personal property is passed with a **bill of sale**.

A **fixture** is an item of personal property that is attached to or incorporated into the land in such a way as to become real property. The courts use the **MARIA** method to determine if an item is a fixture: **Method of attachment, Adaptability, Relationship of the parties, Intention, and Agreement**. **Trade fixtures** are personal property used in the normal course of business, such as shelving or refrigeration units which can be removed by tenants, who are responsible for any damage caused by their removal.

In California, every parcel of land must be properly described and identified. The three methods of identification include the **Metes and Bounds method**, the **Section and Township method**, and the **Lots, Blocks, and Tracts method**. Metes and Bounds is the method of identifying property in relationship to its boundaries, distances, and angles from a given **starting point**.

Sections and Townships are used in a government survey system used to identify public and private lands. This system uses **base lines** (running east and west) and **meridian lines** (running north and south), as well as defining **townships** (36 square mile sections of land, where each section is 36 square miles). **Lots, Blocks, and Tracts** make up subdivisions, which are approved by the Department of Real Estate and the city, and then recorded on a **Subdivision Map** in the County Recorder's Office.

VI. TERMINOLOGY

A. Acre	I. Condominium	Q. Real Property
B. Admission Date	J. Emblements	R. Riparian Rights
C. Airspace	K. Fixtures	S. Rod
D. Base Lines	L. Meridian Lines	T. Section
E. Bill of Sale	M. Metes and Bounds	U. Township
F. Bundle of Rights	N. Personal Property	V. Trade Fixtures
G. Chattel or Chattel Real	O. Potable Water	
H. Commission	P. Range	

1. ____ A column of land six miles wide, determined by a government survey, running in a north-south direction, lying east or west of a principal meridian.
2. ____ Personal property that has become permanently attached to the land or improvements that are legally treated as real property; examples: plumbing fixtures, or built-in range, etc.
3. ____ Personal property used in a business, attached to the property, but removable by the tenant.
4. ____ A structure of two or more units where the interior airspace of each unit is individually owned; the balance of land and improvements is owned in common by all the owners.
5. ____ Imaginary north-south lines used in U.S. government surveys.
6. ____ Property that is movable and not real property.
7. ____ A written instrument that passes title of personal property from vendor (seller) to the vendee (buyer).



CHAPTER 1

8. ____ An amount, usually a percentage, paid to a broker as compensation for his or her services.
9. ____ A legal description of land, setting forth all the boundary lines with their terminal points and angles.
10. ____ All of the legal rights relevant to ownership of property including rights of use, possession, encumbering and disposition.
11. ____ In the survey of public lands, a territorial subdivision six miles long, six miles wide and containing 36 sections, each one square mile.
12. ____ Land, improvements, items permanently attached to the land, appurtenances and that which is immovable by law.
13. ____ A personal property interest in real property; an old term meaning personal property.
14. ____ An area of land equaling 43,560 square feet, or a tract about 208.71 feet square.
15. ____ The right of a landowner, whose land borders a stream or waterway, to use and enjoy the water, provided such use does not injure the rights of other owners.
16. ____ A square of land (U.S. government survey) that contains 640 acres and is one square mile.
17. ____ This old unit of measurement is 16 1/2 feet long (5.5 yards).
18. ____ The reasonable space above a parcel; or in a condominium, the cubic area of a space within the walls.
19. ____ Imaginary east-west lines that intersect meridian lines to form a starting point for the measurement of land.
20. ____ Water that is suitable for human consumption.
21. ____ Crops (produced on leased land by a tenant farmer) from an annual cultivation considered personal property.
22. ____ September 9, 1850.

Answers to the matching terminology are found on page 550.

VII. CHAPTER QUIZ

1. Property is defined as:
 - a. the rights or interests that a person has in the thing owned.
 - b. freehold estates.
 - c. only personal property.
 - d. things that buyers and sellers own.
2. Riparian rights generally:
 - a. are detailed in the trust deed.
 - b. concern the use of moving water from a river or stream within the watershed.
 - c. are detailed in the public records of all counties affected by surface waters.
 - d. are absolute and universal.
3. "Potable water" refers to:
 - a. well water on the property.
 - b. water suitable for irrigation.
 - c. water suitable for drinking.
 - d. water suitable for cooking.

4. Which of the following would normally be considered real property?
 - a. Trade fixtures
 - b. Chattel reals
 - c. Vegetation
 - d. Deeds of trust
5. The ownership of personal property is transferred by using a:
 - a. grant deed.
 - b. financing statement.
 - c. trust deed.
 - d. bill of sale.
6. A loan secured by personal property usually consists of:
 - a. a financing statement and trust deed.
 - b. a promissory note and a trust deed.
 - c. FHA or VA insurance.
 - d. a security agreement.
7. Which of the following is NOT a test for a fixture?
 - a. Adaptability
 - b. Agreement
 - c. Cost and size of the item
 - d. Intention
8. California has how many principal intersections of base lines and meridian lines?
 - a. One
 - b. Two
 - c. Three
 - d. Five
9. A township contains:
 - a. one square mile only.
 - b. a six-mile by six-mile square of land.
 - c. 36 square miles.
 - d. both b and c.
10. A commercial acre is:
 - a. an acre of land used only for agricultural purposes.
 - b. an acre of land where an industrial building is situated.
 - c. an acre of land where retail buildings are situated.
 - d. an acre less the amount of land dedicated for public improvements (sidewalks, alleys, etc.).

ANSWERS: 1. a; 2. b; 3. c; 4. c; 5. d; 6. d; 7. c; 8. c; 9. d; 10. d

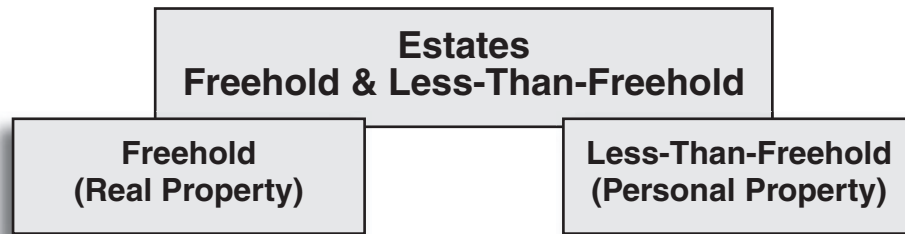


CHAPTER 2

Estates, Transfers, and Titles

In the previous chapter, we explained the differences between real and personal property. In this chapter, we will illustrate the types of estates (ownership) that you may have, the ways in which you can hold title and the methods of transferring real property.

I. Estate Ownership



A. ESTATES (Ownership Interest in Land)

An *ESTATE* is an interest, share, right or equity in real estate that varies from the minimal right of a renter to the maximum right of a full owner.

An estate is an ownership interest in land.

Estates are either (1) **freehold** or (2) **less-than-freehold**, depending upon the degree of ownership and the duration of interest. Freehold estates are real property and less-than-freehold estates are personal property. Less-than-freehold estates come with certain rights for the use of real property (see **Figure 2-1**).

B. FREEHOLD ESTATES (Real Property)

The two major types of freehold estates are: 1) fee simple estates and 2) life estates.

The two types of freehold estates are the greatest degree of ownership you can have under the law.

1. Estates in Fee

A fee simple estate is the most complete form of ownership and the most common in California. This can be referred to as fee, fee ownership, or fee simple. **FEE SIMPLE**



CHAPTER 2

CHAPTER OUTLINE

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IV. RECORDING AND ACKNOWLEDGMENT (p. 40)

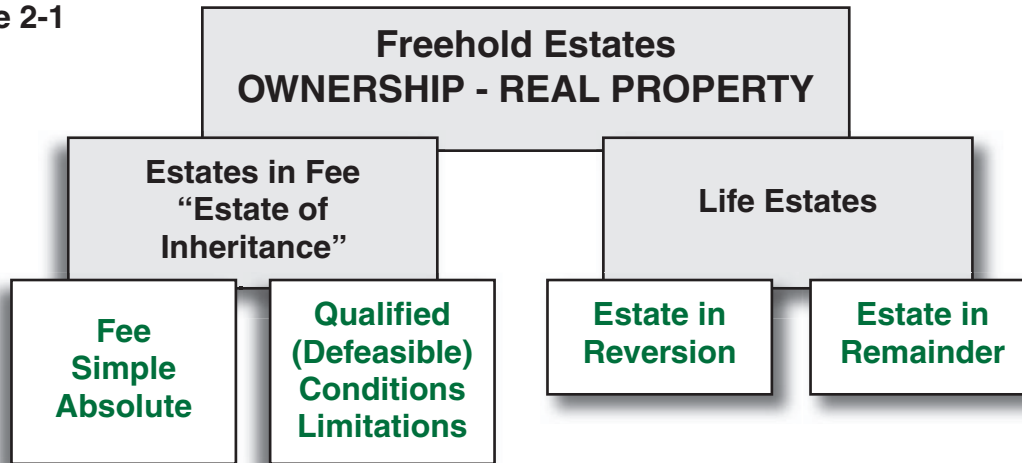
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Figure 2-1



means an owner has transferred all rights of a property to a new owner for an indefinite duration of time (perpetual). All transfers are assumed to be fee simple unless the grant part of the deed limits, by the use of conditions, the property's use.

An estate in fee (also called "fee simple" or "fee") is the greatest interest a person can hold; it is of "indefinite duration" (perpetual), "freely transferable," and "inheritable" (referred to as an estate of inheritance). An estate in fee is a freehold estate.

a. Conditions That Restrict a Fee Estate (Fee Simple Defeasible Estate)

A **FEE SIMPLE DEFEASIBLE ESTATE** (or *qualified fee estate*) is a fee estate that is subject to particular limitations imposed by the grantor of the estate. **Breaking any condition of the transfer may be grounds for terminating or revoking the property transfer.**

Example: Duke sold his property to Jane with the condition that Jane must never use it for any purpose other than as a private residence. However, after owning the property for several years, Jane decided to start a board and care facility for handicapped adults. The estate may revert to Duke because it is a fee simple defeasible estate.

Example: A buyer agrees not to sell alcoholic beverages on a property. This condition is included in the deed. The buyer has taken fee simple defeasible title to the property. If a person takes title subject to a condition (subsequent) that liquor not be served on the premises, and then turns around and breaks this promise, the previous title holder has grounds to reclaim title through a court action.

In this chapter we have briefly discussed conditions, as in CC&Rs (Covenants, Conditions, & Restrictions). For a more complete discussion of other types of private restrictions, please see Chapter 3.



CHAPTER 2

2. Life Estate (Indefinite Period)

A life estate is an example of a freehold estate.

A **LIFE ESTATE** is an ownership interest in real property that only exists for the life of any designated person or persons (often the grantee). The usual intent of this type of estate is to provide a lifetime residence for an individual. A life estate can be created by either a will or a deed. When that designated person dies, the estate reverts back to the original owner. A person holding a life estate is free to lease the property to someone else, but this lease is also subject to the lifetime limitation.

A life estate holder may lease the property to someone else, but if the designated person dies, the estate ends and all rights, including any tenant rights, revert back to the original owner/grantor.

Example: John owns a life estate based upon his own life. He leases the property to a tenant on a five-year lease. John, the life tenant, dies two years later. The lease is terminated.

The life tenant usually has certain interests and obligations as long as the life estate is in effect. The life tenant:

1. has the right of physical possession of the property;
2. has the right to all rents and profits, but this terminates when the life estate holder dies;
3. can usually lease the property, but not beyond the time frame of the life estate;
4. is obligated to keep the property in good repair, although he or she is not required to make improvements;
5. may not damage or destroy any permanent part of the property to the detriment of succeeding interests, and
6. is usually responsible for all annual costs and expenses.

The party (grantor) granting a life estate is said to hold an **ESTATE IN REVERSION**.

If I give you a life estate, you hold “possession” for as long as you live. You can lease it out. However, if you lease it out, when you die, possession reverts back to me, or any specified person (estate in remainder).

If an owner granting a life estate names another person to receive title upon the death of the current life estate holder, that other person claims an **ESTATE IN REMAINDER**. The holder of an estate in remainder or estate in reversion has no right to the use and enjoyment of the property until the current life tenant dies.

“Pur autre vie” (often used in life estates) means “for another’s life.”

C. LESS-THAN-FREEHOLD ESTATES (No Title to Real Property) **(A Leasehold is Personal Property)**

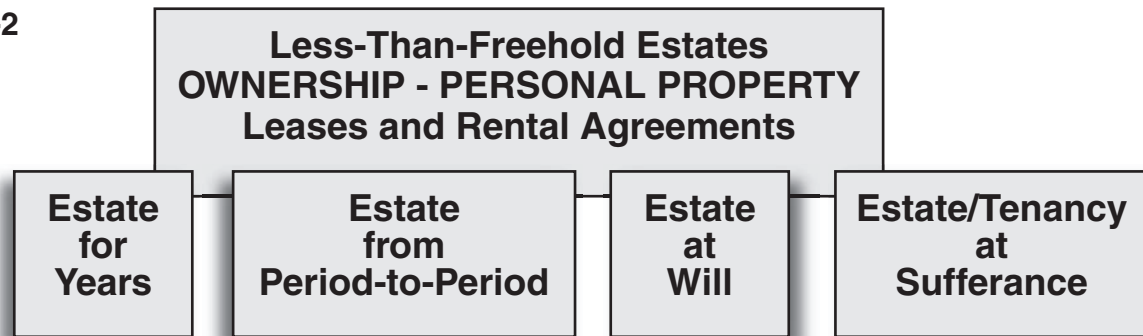
A less-than-freehold estate is also called a leasehold estate, and is considered personal property.

LESS-THAN-FREEHOLD ESTATES are personal rights to the use of real property for a period of time. They are more commonly referred to as **leases** or rental agreements, which give tenants various rights to use real property for a specified period.

A similarity between owning a condominium and renting an apartment is the occupier of each unit has an estate in real property.

The tenant (renting the apartment), however, only has possession of the property (see Figure 2-2).

Figure 2-2



1. Estate For Years (Tenancy for a Fixed Term)

An *ESTATE FOR YEARS* is a lease for a fixed period of time, agreed to in advance. This period can be from a few days up to 99 years. No notice to terminate is necessary.

Whether a lease is for two months or seven years, it is considered an “estate for years,” personal property, and chattel real.

2. Estate From Period-To-Period (Periodic Tenancy)

An *ESTATE FROM PERIOD-TO-PERIOD* is a renewable agreement to rent or lease a property for a period of time, where the rental or lease amount is fixed at an agreed to sum per week, month, or year. A notice to terminate must be given (usually 30 days).

3. Estate At Will

An *ESTATE AT WILL* is a rental agreement that can be terminated by either party at any time, although by California law, there must be at least a 30-day notice to vacate (so there is no true “estate at will” in California).

An estate at will can be terminated by either the lessor or the lessee.

4. Estate At Sufferance/Tenancy At Sufferance

An *ESTATE AT SUFFERANCE* occurs when the person renting or leasing a particular property remains after the expiration of the stated term.

A *TENANCY AT SUFFERANCE* occurs when a tenant remains in the property after expiration of a lease without the owner’s consent.

The four main types of less-than-freehold estates are explained in further detail in Chapter 6, “Landlord and Tenant.”



CHAPTER 2

II. Acquisitions and Transfers

Alienation is the opposite of acquisition. "Acquisition" means to acquire, buy, or pull in, whereas "alienation" means to transfer, sell, or push away.

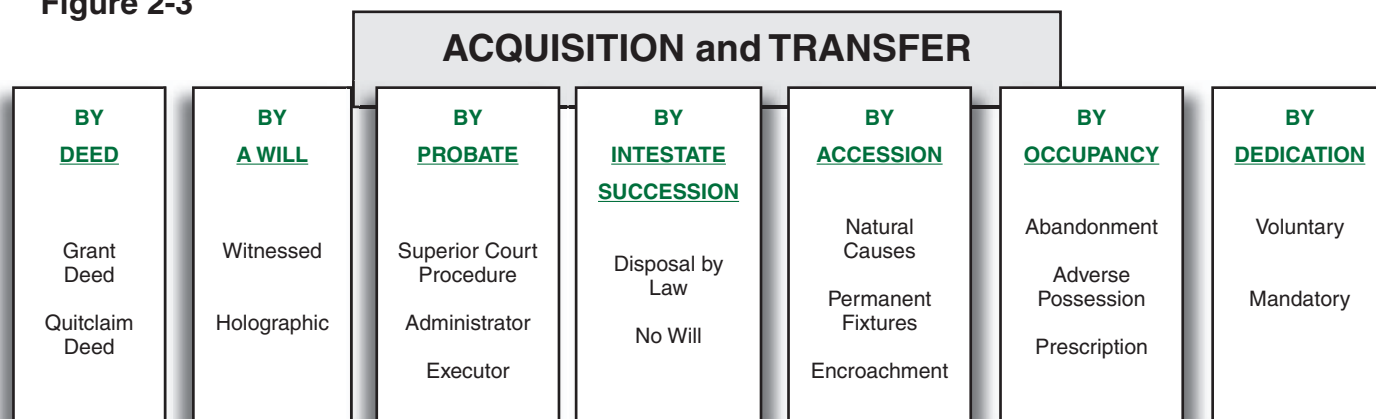
A. TRANSFERS

A sale is the means by which real estate is usually transferred. A sale is the most familiar way of transferring property, but it is not the only way. The seven basic ways to transfer real property are:

1. Deed
2. Will
3. Probate
4. Intestate Succession (no will)
5. Accession
6. Occupancy
7. Dedication

Figure 2-3 illustrates the seven methods of transferring real property.

Figure 2-3



1. Transfer by Deed

The deed is NOT the title, but is "evidence" of the title.

The most common method of acquiring title to a property is by deed transfer. In California, *CONVEYANCE* is the document used to effect the transfer of title to property from one person to another. This is usually accomplished by a simple written document known as a deed. A *DEED* is a written instrument that conveys and evidences title.

The *GRANTOR* is the person who grants property or property rights (seller). The *GRANTEE* is the person to whom the grant is made (buyer). A grantee cannot be a fictitious person (i.e., Batman or Catwoman), but it can be a person with a fictitious name (i.e., Microsoft, Inc.).

Grant deeds must have a "granting" type clause (action clause). The grantor is the person transferring real property. Both grant deeds and quitclaim deeds are signed only by the grantor, at which time they are considered to be "executed."

There are two basic types of deeds: (1) grant deed and (2) quitclaim deed. All other deeds are versions of these two deeds.

ESTATES, TRANSFERS, AND TITLES

A **GRANT DEED** is a document that transfers title (evidence of property ownership), with the key word being “grant” (see **Figure 2-4**). The grant (or warranty) aspect of the deed is a promise that:

- a. The owner (grantor) has not conveyed title to the property to any other person (grantee).
- b. The property is free of any encumbrances (liens or other restrictions) other than those already disclosed to the grantee. A grant deed also transfers any **after-acquired title**, meaning that rights obtained after the sale has been completed are also conveyed.

These warranties are part of the grant deed, although they are not written into the deed. They are called **IMPLIED WARRANTIES** because they are not expressed in writing, but are present.

Grant deeds contain “implied warranties” that are NOT expressed in writing.

It should be noted that the grant deed does not necessarily give one all the rights to a property. Easements, rights of way, mineral rights, building restrictions and other types of restrictions may still restrict the use of the property.

A person who transfers title to real property is the grantor; therefore anyone who signs a grant deed or a quitclaim deed is a “grantor.” The person receiving property is the “grantee.”

A **QUITCLAIM DEED** is a deed that conveys all the present rights or interest that a person may have in a property, without any warranty, title, or interest.

Quitclaim deeds make NO “covenants” (promises); they guarantee nothing. They only convey any rights the grantor may have.

A quitclaim deed can give absolute ownership or only such title as one may hold. If there is no ownership interest, then nothing can be acquired. Read the quitclaim deed in **Figure 2-5**. Note that there are no warranties; just the clause, “do hereby remise, release, and forever quitclaim to...” This deed is used primarily to clear a cloud on title from the records. A **CLOUD ON TITLE** is a claim, encumbrance or condition that impairs the title to real property until disproved or eliminated, as, for example, through a quitclaim deed or a quiet title legal action.

A **QUIET TITLE ACTION** is a court proceeding to remove a cloud on title to real property. It is usually a minor defect that requires a quitclaim deed before a title insurance company will clear the transfer. A quitclaim deed is often used in divorce actions, so that one party may have clear title.

The ownership of real property may best be determined by a quiet title action.

Example: For three generations the Mendez family has owned the mining rights to mine gold on Diego’s land. Last month, Diego sold his land to a developer who promptly enclosed the land with a large chain-link fence that had only one access, a locked gate. The Mendez family should institute a quiet title action.

If a buyer purchases a property on an installment plan and abandons that property after a few payments, then there will likely be a “cloud on the title” if the contract was recorded.

Figure 2-4

<p>RECORDING REQUESTED BY</p> <p style="font-size: 1.5em; font-weight: bold; text-align: center;">827367</p> <p style="text-align: center; font-size: 0.8em;">WHEN RECORDED MAIL TO</p> <div style="border: 1px solid black; padding: 5px; margin-top: 5px;"> <p>NAME Philip S. Dockter</p> <p>Street Address 1212 Lincoln Avenue</p> <p>City & State Pomona, California 91767</p> </div> <p>#61638</p> <p style="text-align: center; font-size: 0.8em;">MAIL TAX STATEMENTS TO</p> <div style="border: 1px solid black; padding: 5px; margin-top: 5px;"> <p>NAME SAME AS SHOWN ABOVE:</p> <p>Street Address</p> <p>City & State</p> </div>	<p style="font-size: 2em; font-weight: bold;">320</p>	<p style="text-align: right;">BK D5061 PG 621</p> <div style="border: 1px solid black; padding: 5px; margin-top: 10px;"> <p style="font-size: 0.8em;">RECORDED IN OFFICIAL RECORDS OF LOS ANGELES COUNTY, CALIF. FOR TITLE INSURANCE & TRUST CO</p> <p style="text-align: center;">MAY 19 1971 AT 8 A.M.</p> <p style="text-align: center;">Registrar-Recorder</p> </div> <div style="border: 1px solid black; padding: 5px; margin-top: 10px; float: right;"> <p style="font-size: 0.8em;">FEE \$2 C</p> </div> <p style="text-align: center; font-size: 0.8em;">SPACE ABOVE THIS LINE FOR RECORDER'S USE</p> <div style="border: 1px solid black; padding: 5px; margin-top: 10px;"> <p>DOCUMENTARY TRANSFER TAX \$33.00</p> <p><input type="checkbox"/> Computed on full value of property conveyed</p> <p><input type="checkbox"/> Or computed on full value less liens and encumbrances remaining at time of sale.</p> <p style="text-align: center;">WILSHIRE ESCROW COMPANY</p> <p>Signature of Declarant or Agent determining tax. Firm name</p> </div>
---	---	--

Grant Deed

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

HENRY W. SPLITTER, a widower, who acquired title as HENRY SPLITTER, does hereby

GRANT to Philip S. Dockter, a single man,

the real property in the City of Los Angeles County of Los Angeles
State of California, described as:

Lot 22 in Block 21 of Short Line Beach Subdivision No. 2, as per map recorded in
Book 4 Page 42 of Maps, in the office of the County Recorder of said County.

RESERVING UNTO THE GRANTOR 50% of all oil, minerals, coals, petroleum, gas and
kindred substances in and under said land, from a depth below 500 feet from the
surface of said land, but without the right of entry of the surface thereof.

SUBJECT TO:

1. General and Special Taxes for the fiscal year 1971-72.
2. Covenants, conditions, restrictions, reservations, easements, rights and rights
of way of record, if any.
3. Trust Deed to file concurrently herewith.

Dated April 15, 1971

STATE OF CALIFORNIA } SS.

COUNTY OF Los Angeles

On May 4, 1971 before me, the under-
signed, a Notary Public in and for said State, personally appeared
Henry W. Splitter

_____, known to me
to be the person whose name is subscribed to the within
instrument and acknowledged that he executed the same.

WITNESS my hand and official seal.

Signature:

Donald R. Shewfelt

(This area for official notarial seal)

Name (Typed or Printed)

Henry W. Splitter

MAIL TAX STATEMENTS AS DIRECTED ABOVE

Figure 2-5

RECORDING REQUESTED BY		
<small>AND WHEN RECORDED MAIL THIS DEED AND, UNLESS OTHERWISE SHOWN BELOW, MAIL TAX STATEMENTS TO:</small>		
<small>NAME ADDRESS CITY & STATE ZIP</small>		
Title Order No. _____	Escrow No. _____	SPACE ABOVE THIS LINE FOR RECORDER'S USE

Quitclaim Deed

The undersigned declares that the documentary transfer tax is \$ _____ and is
☐ computed on the full value of the interest or property conveyed, or is
☐ computed on the full value less the value of liens or encumbrances remaining thereon at the time of sale. The land, tenements or realty is located in
☐ unincorporated area ☐ city of _____

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

_____ do hereby remise, release and forever quitclaim to

the following described real property in the _____ county of
state of California:

Dated _____

STATE OF CALIFORNIA }
COUNTY OF _____ } SS

On this the _____ day of _____ 19 __, before me,
the undersigned, a Notary Public in and for said County and State,
personally appeared _____

_____, personally known to me
or proved to me on the basis of satisfactory evidence to be the
person _____ whose name _____ subscribed to the within instrument
and acknowledged that _____ executed the same.

Signature of Notary

FOR NOTARY SEAL OR STAMP

MAIL TAX STATEMENTS TO PARTY SHOWN ON FOLLOWING LINE; IF NO PARTY SO SHOWN, MAIL AS DIRECTED ABOVE

Name	Street Address	City & State
SAFECO Stock No. CAL-0011A		



CHAPTER 2

A **VALID DEED** has all the following essential elements:

- a. It must be in writing.
- b. The parties (grantee and grantor) must be properly named and have legal capacity.
- c. The property must be adequately described (need not be legal description).
- d. There must be a granting clause (action clause).
- e. It must be signed by the granting party (grantor).

A valid deed passes title when the deed is recorded (which is a form of delivery), thereby giving constructive notice.

A deed does not take effect until it is delivered and accepted. In order for title to be transferred, the grantor must sign the deed and deliver it with the intention of passing title immediately.

Some subtypes of grant or quitclaim deeds used in California are:

GIFT DEED – *Granted as a gift of love and affection. No other consideration is necessary, but is void if given to defraud creditors.*

TAX DEED – *Given if property is sold as payment of past-due property taxes.*

ADMINISTRATOR'S DEED or EXECUTOR'S DEED – *Given to the purchaser of the deceased person's real property.*

SHERIFF'S DEED – *Granted to the purchaser at a court-ordered sale.*

TRUSTEE'S DEED – *Given to the purchaser of property at a trust deed foreclosure sale.*

GUARDIAN'S DEED – *Used by a guardian to transfer the real property of minors or incompetents.*

LAND PATENT – *Used by the government to grant public land to an individual.*

A deed does NOT have to be acknowledged to be valid. Delivery and acceptance of the deed is presumed with recording.

The following are the three basic methods of delivery:

1. **MANUAL DELIVERY** is a direct transfer of the deed from the grantor to the grantee.
2. **DELIVERY THROUGH RECORDING** is the act of putting the title of record in the grantee's name at the county recorder's office. The grantee must have agreed to the recording.
3. **CONDITIONAL DELIVERY** requires that a specific event take place before title can be passed, and must be handled by a disinterested third party. The deed is then delivered manually.

A "trust deed" is NOT a deed, but rather a conveyance; it gives bare (or naked) legal title to a trustee with the power to sell.

ESTATES, TRANSFERS, AND TITLES

2. Transfer by Will (Testate)

A **WILL** is a document, created by a person, stating how that person's property is to be conveyed or distributed upon his or her death. It also leaves instructions as to the disposition of the body upon death. This is known as dying **TESTATE**, which means having made and left a valid will. A **TESTATOR** or **TESTATRIX** is one who makes a will. To **BEQUEATH** is to transfer personal property by will; to **DEVISE** is to transfer real property by will. There are two types of wills that can legally dispose of real and personal property:

- a. Witnessed will (typed)
- b. Holographic will (handwritten)

A **WITNESSED WILL** is a typed document usually prepared by an attorney, dated, signed by the property owners and declared to be a will by at least two witnesses (**three signatures total**).

A **HOLOGRAPHIC WILL** is entirely handwritten by the owner, dated, and signed. Since it is in the owner's own handwriting, no other formalities and no witnesses are required, unless the will is signed with an "X," in which case it must be witnessed.

A holographic will is NOT a printed form.

A **CODICIL** is a change in a will before the maker's death.

Note: A **REVOCABLE LIVING TRUST** is a trust that is effective during the life of the owner, rather than upon his or her death. It can eliminate probate (to prove a will) cost and serve the same function as a will. The property is placed in a trust created for the heirs and may consist of both real and personal property. It is revocable at the discretion of the benefactor (owner), but becomes fully enforceable upon that person's death. There can be a considerable estate tax savings under this arrangement, depending on the size of the estate. At the very least, a revocable living trust protects the interests of everyone involved while avoiding the time and expense of probate. This type of trust is, however, rather complicated to set up, so an attorney specializing in this field should be consulted.

3. Transfer by Probate (Superior Court Approval)

PROBATE is a Superior Court procedure to determine a will's validity, any creditors' claims, and establish the identity of the beneficiaries. There are charges for the court probate action and fees for any related attorney costs.

The real estate commission for a property that is in probate is set by court order.

After a person dies, an **administrator (male)** or **administratrix (female)** is appointed by the court to temporarily take possession of the property until probate is finalized. An **executrix** is a female person appointed by will to administer the estate of the deceased person (**executor** is a male).

The minimum length of time for probate is six months. A party has four months to file a claim for probate.

Note: Wills and living trusts are legal devices for transferring property at death. To protect yourself, have an attorney draw up a will or living trust that reflects your desires, or leave your own handwritten (holographic) will.



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Customarily, the court confirms a probate sale and sets the broker's commission.

4. Transfer by Intestate Succession (No Will)

*If there is no will, the procedure used for transferring the deceased's property to his or her heirs is called **INTESTATE SUCCESSION**. The law of intestate succession provides for the disposition of the property. The rules for dividing the property are complex and dependent upon the relationship of the kin.*

***Separate property:** If the decedent has no will and leaves a spouse and one child, property is divided equally, 50-50. If there is a surviving spouse and two or more children, 1/3 goes to the spouse and 2/3 to the children. If there is no surviving spouse, property is divided equally among the children.*

***ESCHEAT** is the term used if there is no will and there are no heirs; the property will go to the state of California. This is not automatic. There is a **five-year period** during which heirs can make claims to the state for the property.*

*If a person dies intestate and leaves no heirs, his/her estate will go to the state of California if no heirs are found during a five-year period. Individuals do **NOT** acquire property by escheat.*

5. Transfer by Accession (Natural Causes)

***ACCESSION** occurs when an owner acquires title to additional land by natural causes, that is, additions to the property by natural growth. The addition to land from natural causes, such as earthquakes, volcanoes, or the action of moving water is known as **ACCRETION**. For example, a river, over time, may slowly deposit soil on one of its banks. These deposits of earth made through the natural action of water, called **ALLUVIUM**, become the real property of the landowner who holds title to the river bank. **AVULSION** is the sudden, violent tearing away of land by, for example, a river. Title to that land is lost by the property owner.*

The owner of property adjacent to the water flow can acquire title to additional land by accession or accretion.

*Permanent fixtures attached to the land or buildings by residential tenants must be left with the building. Any improvements that are mistakenly placed on the property must also remain. Placement of improvements and permanent fixtures on property that do not legally belong to the person who placed them is called **ENCROACHMENT**.*

A fence built over the property line onto a neighbor's lot is a form of encroachment. The neighboring landowner has three years from discovery to take action for its removal.

6. Transfer by Occupancy

Ownership of real property, or the use of real property, can be gained through three types of occupancy:

- a. Abandonment
- b. Adverse Possession
- c. Prescription (by use)

ESTATES, TRANSFERS, AND TITLES

a. Abandonment

ABANDONMENT is the relinquishing of a right or interest with the intention of never again reclaiming it. One cannot acquire title to abandoned real property without court action, but a landlord can acquire possession of a property that is left (abandoned) by a tenant simply by gaining full control of the property. In the case of a lease, a financially troubled tenant might negotiate a release or abandon the property, thereby forfeiting part of the deposit.

When a tenant voluntarily moves out of an apartment and never returns, this is called abandonment or vacating.

b. Adverse Possession

ADVERSE POSSESSION is acquiring title to another's property through continuous and notorious occupancy for five years under a claim of title. It is the legal way to acquire title without a deed. Title may be obtained through adverse possession only if certain conditions are met:

1. **Open and notorious occupancy** – The adverse possessor must live on, or openly use, the property in such a way that the titled owners might easily detect his or her presence.
2. **Hostile and adverse** – The adverse possessor must possess the property hostile to the legal owner, without his or her permission or any rental payment (consideration).
3. **Uninterrupted use for five years** – The adverse possessor must use the property continuously for at least five consecutive years.
4. **Right or color of title** – The adverse possessor must have some reasonable claim of right or color of title (perhaps a defective written instrument) as a basis for his or her assertion. For example, a person could claim that his uncle gave the property to him before he died, but the deed is missing.
5. **Property taxes** – The adverse possessor must have paid all taxes levied and assessed on the property for five consecutive years.

The courts will require substantial proof before ruling there is an adverse possession. To obtain marketable title, or before a title insurance company can insure a property, clear title must be obtained by a court decree. This essentially means that a "quiet title" action is brought in court to prove that all requirements have been fulfilled. In the peoples' interest, adverse possession is not possible against public or government lands, but only against privately owned lands.

c. Easement by Prescription

PRESCRIPTION is an easement, or the right to use another's land, which can be obtained through five years of continuous use. Its requirements are similar to those of adverse possession, the differences being that by prescription: 1) only the use of the property has been obtained, and 2) taxes are still paid by the property owner (paying the property taxes is not a requirement for an easement by prescription).



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Unlike “adverse possession,” “prescription” is the “use” of a property, NOT the transfer of the title.

7. Transfer by Dedication

DEDICATION is the gift (appropriation) of land, by its owner, for some public use. To be fully dedicated, the land must be accepted for such use by authorized public officials. Dedication may be either (1) voluntary or (2) mandated by statute.

III. Title (Forms of Ownership)

A. TITLE

TITLE is the right to ownership of land and the evidence of that ownership. There are six distinct methods of holding title. **Figure 2-6** displays the six ways a person, or persons, may hold title to real property and whether a single title holder has the right to will or sell his or her share independent of the other owners. **VESTING** is the placing of a person’s (or persons’) name on the deed and the description of the method by which that person will hold title.

Figure 2-6

Methods of Holding Title (Vesting) Concurrently or in Severalty

A SINGLE TITLE HOLDER	WILL	SELL
SEVERALTY (“Sole Ownership”)	YES	YES
TENANCY IN COMMON	YES	YES
JOINT TENANCY	NO	YES
TENANCY IN PARTNERSHIP	NO	NO
COMMUNITY PROPERTY	YES	NO
COMMUNITY PROPERTY (w/Right of Survivorship)	NO	NO

Vesting is the method by which one holds title. A deed to a fictitious name is valid; a deed to a fictitious person is void.

1. Severalty (Sole Ownership)

SEVERALTY is the sole and separate ownership of property by one individual or by a corporation. The word “severed” means to sever, to cut off or separate. The name severalty is misleading; it means single.

Severalty means “sole ownership.”

Property held by corporations is owned in severalty, as if by a single individual. A **CORPORATION** is a body of persons treated by law as a single “legal person,” having a personality and existence distinct from that of its shareholders. A corporation can go on forever; it does not die.

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Examples to show ownership by severalty are:

as a natural person, a real person

“Mary Smith, a single woman”

or

“Mary Smith, an unmarried woman”

or as a legal person; charter granted by the state

“Urban Analysis Inc., a corporation”

Sometimes married people wish to keep ownership to certain properties as separate property (in severalty). They may then use the phrase:

“Mary Smith, a married women, as her sole and separate property”

or

“Jim Smith, a married man, as his sole and separate property”

2. Tenancy In Common (Unity of Possession)

*When two or more people own property together with the right to will or sell it (however, without survivorship rights or community property rights), it is called **TENANCY IN COMMON**. If there is no other agreement, they will each share an equal interest in the property. All tenants in common have **UNITY OF POSSESSION**, which means they each have the right to occupy the property. Often, the property is rented to one of the owners or to a tenant. Tenancy in common gives all owners a share of the income and expenses of the property.*

Each owner may sell or transfer his or her interest separately from the others. For example, if one of the four owners of a building were to sell his/her one-quarter interest, there would be no restrictions. More commonly, if one of the owners dies, his/her heirs would inherit a one-quarter interest in the property.

If the owners do not agree on the ownership or management, and persistent disagreements exist, it would probably be best to sell the property and divide the profits accordingly. If an agreement cannot be reached by the owners, a court of law will sell the property and decide what is best for all concerned. *When the courts have the responsibility of physically dividing or selling the property, it is referred to as a **PARTITION ACTION**.* It is obviously better for the owners to sell the property themselves, as attorney's fees and court costs would be involved. Furthermore, the court would probably sell the land at a lower price to expedite the sale.

3. Joint Tenancy (Right of Survivorship)

***JOINT TENANCY** occurs when two or more people have identical interests in the whole property with the same right of possession and the right of survivorship. If one of the joint tenancy owners should die, his or her interest is then split evenly with the surviving owners. Joint tenancy can never be willed.*

Joint tenants have the right of “survivorship.” A joint tenancy cannot be willed.



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Example: Dick and Jane, brother and sister, own an apartment building in joint tenancy. Dick needs \$10,000 to cover unexpected medical expenses, so he borrows the money from a lender, signing a trust deed on the property that was soon recorded in the public records. Forty-five days later, Dick dies. Jane now owns the apartment free and clear of the brother's \$10,000 debt.

Example: Al and Betty are brother and sister and own an apartment building in joint tenancy. Al having a trust deed or mortgage recorded against his $\frac{1}{2}$ interest in the property would not terminate this joint tenancy.

A joint tenancy in real property can legally be created with the execution of a deed by a husband and wife to themselves as joint tenants, existing joint tenants to themselves and others as joint tenants, and existing tenants in common to themselves as joint tenants.

When a joint tenancy is established, there are four necessary unities (**T-Tip**):

- T** 1. **Title** – All owners are granted title by the same instrument.
- T** 2. **Time** – All owners obtain title at the same time.
- I** 3. **Interest** – All owners share an equal interest.
- P** 4. **Possession** – All owners have an equal right to possess the property.

To create joint tenancy, there must be intention by the owners. If it does not “state” that it is a joint tenancy, joint tenancy does not exist.

If one of the parties should die, the property is automatically transferred to the remaining parties without having to go through the superior court procedure known as **PROBATE** (*to prove a will*). The transferred portion conveys the ownership and all debts on the property at the moment of death. Upon death, that debt does not transfer to the surviving joint tenants until it is foreclosed. Although probate costs may be avoided in joint tenancy, the surviving owners may end up paying higher income taxes later.

Joint tenancy is free of “unsecured debts.”

A joint tenant can sell or transfer his or her ownership interest. Any portion of joint tenancy transferred or sold to a nonowner will bring the nonowner into tenancy in common with the other owners, who remain as joint tenants. If A, B and C own a property together and C sells his interest to D, then D gets only the tenancy in common interest with A and B (who continue to be joint tenants).

Because a corporation could, conceivably, go on forever, it is not permitted to enter into joint tenancies. Such a situation would give corporations an unfair survivorship advantage.

4. Tenancy in Partnership

TENANCY IN PARTNERSHIP refers to two or more people who are co-owners in a business. In a **GENERAL PARTNERSHIP**, the partners share all profits and losses and share management responsibilities. All partners must agree to a sale or transfer of real property. Each has a right to possess the partnership property. If a partner should die, his or her interest passes to any heirs who then have a right in the partnership, but not in any particular

property. If an agreement cannot be reached with the heirs, the partnership may have to be dissolved.

The amount invested in a partnership need not be equal, but must be agreed upon mutually. The partnership agreement states the amount of money to be contributed by each, the duties of each, and sets the proportional distribution of profits or losses.

A **LIMITED PARTNERSHIP** (*tax shelter*) is one consisting of one or more general partners and limited partners. A limited partner's losses are limited to the amount of his or her investment. A limited partner does not share management responsibilities.

5. Community Property

COMMUNITY PROPERTY refers to all the property acquired by a husband and wife during their marriage. California is a community property state, which means that any property acquired during a marriage is shared equally. This practice is derived from Spanish law and became incorporated into our legal system when California was a part of Mexico. Both husband and wife must sign all transfer documents to convey community real property. If only one spouse signs a transfer document, the "injured" spouse could void the sale within a one-year period. **As a salesperson, you should make certain that both husband and wife sign all real estate documents, such as listings, purchase agreements, and escrow instructions, if the property being transferred is community property. Both signatures are required when selling, borrowing money, or leasing community property for more than one year.**

Both husband and wife's signatures are needed to transfer property deeded "Mary Smith, a married woman."

The right to manage the community property is shared by both the husband and wife. Each can will his or her respective half to whomever he or she wishes. **If there is no will, the half belonging to the deceased would go to the surviving spouse. If willed to an heir, the heir and the remaining spouse would then be tenants in common.**

Community property (husband and wife) vesting has equal interest.

Debts can become a liability if they are incurred after marriage. Debts incurred by either spouse before marriage cannot be converted to the debts of the community property. The law also allows some community property to be transferred without going through probate. Questions about debts or probate should be directed to an attorney, as this issue is quite complex.

Wages (paychecks) earned by either spouse during a marriage are considered "community property."

Any property obtained by either the husband or wife before marriage may remain as **SEPARATE PROPERTY**. Both may inherit or receive gifts of property during the marriage, which can remain as separate property. **However, any proceeds from the property held separately, such as rents or profit, cannot be commingled with community property, as this would cause them to become community property.**

Do not advise a buyer on how to hold title—that is giving legal advice. However, you can explain the different ways to take title. How a person holds title has a big impact upon income tax planning and estate planning.



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A real estate agent who advises a buyer on how to take title to real property may be liable for practicing law, giving tax advice, and discrimination.

6. Community Property with Right of Survivorship

The California Legislature enacted legislation that allows married couples in California to hold title to real and personal property as “community property with right of survivorship.” **COMMUNITY PROPERTY WITH RIGHT OF SURVIVORSHIP** transfers ownership to the spouse at death, with income tax benefits. The goal of the legislation was to combine the right of survivorship benefit of joint tenancy with the favorable tax status of community property under federal tax law. The survivorship benefit allows title to pass to the surviving spouse at the death of one spouse. The surviving spouse also gets the benefit of a stepped-up basis for 100% of the property upon the death of a spouse. The surviving spouse may use an affidavit of death of spouse to satisfy title company underwriting requirements to convey or encumber title. Probate proceedings are not necessary to transfer title to the surviving spouse.

IV. Recording and Acknowledgment

A deed does NOT have to be “acknowledged” or “recorded” to be valid, although it is wise to do both.

A. RECORDING

RECORDING is the legal process of making an instrument an official part of the records of a county, after it has been acknowledged. Instruments that affect real property are legal documents, such as deeds, mortgages, trust deeds, leases and contracts of sale. **Recording gives constructive notice** of the existence and content of these instruments to the public.

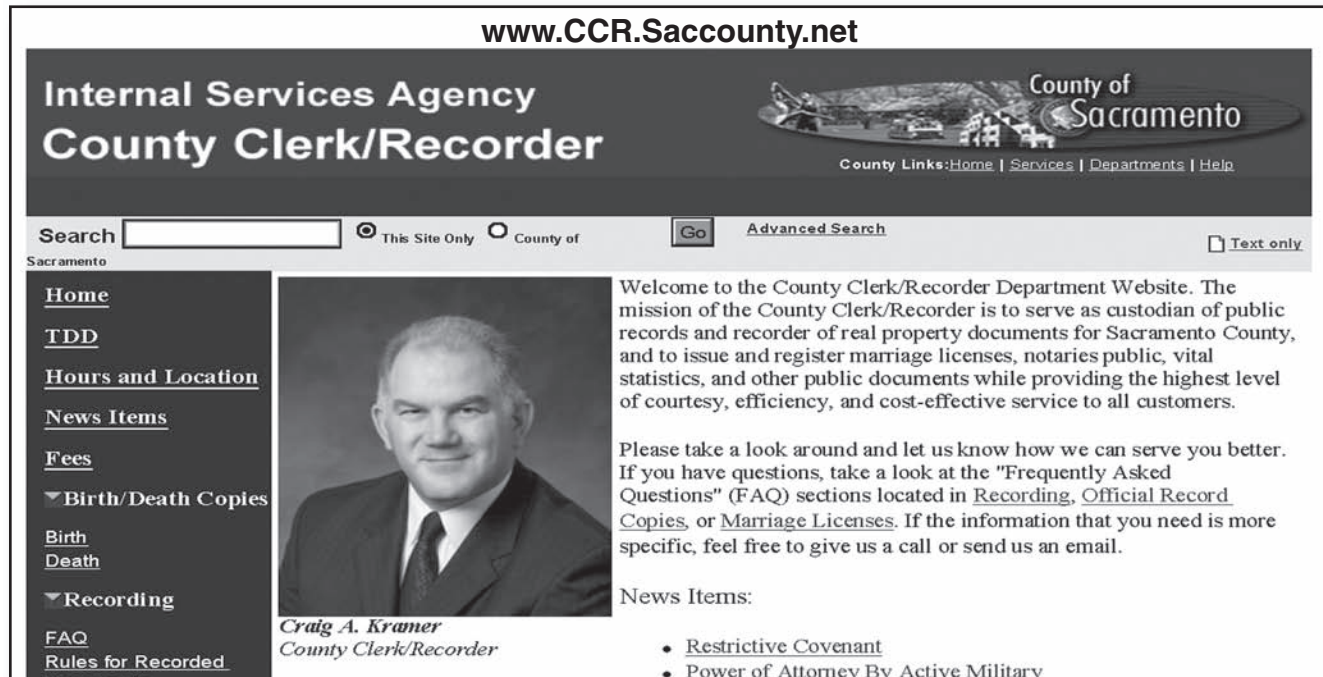
CONSTRUCTIVE NOTICE is notice of documents presumed by law to have been acquired by a person whether or not they have actually examined them. It can be accomplished by recording a deed or taking possession of the property. Any recorded notice that can be obtained from the county recorder’s office can be considered constructive notice (and therefore public knowledge).

ACTUAL NOTICE is knowing (or one’s responsibility for knowing) that a transaction has taken place. If you have found, for example, that someone other than the owner is living in a house you are buying, you should have been aware of the existence of a signed lease. This is actual notice, whereas public records are representative of constructive notice. The act of taking possession (holding an unrecorded deed) gives constructive notice.

The recording process is a privilege rather than a legal requirement. **Some documents have to be recorded to be valid. These include mechanic’s liens and declarations of homestead.** You may record an acknowledged instrument at any time. However, failure to utilize the privilege of recording at the earliest possible date can result in a question of legal or rightful title.

If the same property is sold to more than one party, the individual who has given constructive notice first (by possession or recordation) will usually be recognized as the rightful owner.

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Example: When selling his home to John, Bert negotiated a leaseback arrangement in order to continue renting and occupying the property for the next two years. John immediately placed the unrecorded grant deed into a safe deposit box for ultimate security. Two days later, Bert “sold” the home a second time to Julie, who promptly recorded her deed. Julie is the likely owner of the property by virtue of recording her deed first.

In order to establish priority, the documents affecting real property must be recorded by the county recorder in the county where the property is located. If the property is located in two counties, the documents should be recorded in both counties.

B. PRIORITY OF RECORDING

Under the recording system in California, “The first in time is the first in right.” If an owner sells his or her house twice, the first deed recorded usually is considered the valid deed. This person must not have knowledge of the rights of the other party. This is the reward granted in California for recording any real estate transaction. However, there are four exceptions to the rule, including:

1. Government liens, property taxes, and special assessments.
2. Actual or constructive notice of another person’s prior rights.
3. Mechanic’s liens.
4. Agreements to the contrary.

C. ACKNOWLEDGMENT (or Notary)

All documents must be acknowledged before they are recorded by the county recorder. *ACKNOWLEDGMENT* refers to a signed or verbal statement by the named person that he/she has



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signed that document of his/her own free will. In other words, that person “acknowledges” his or her signature. This acknowledgment must be performed in the presence of a witness, usually a notary public, authorized by law to witness acknowledgments.

A **NOTARY PUBLIC** is a person who is authorized by the Secretary of State to witness the acknowledgment of documents. All notarized documents must be stamped with a notary seal. The seal must contain the following information:

1. The word “Notary Public”
2. The name of the county
3. The name of the notary
4. The state seal
5. The expiration date

In order to be notarized, any person signing a **grant deed, quitclaim deed, or trust deed** is required to place a right thumb print on the notary’s sequential journal. This is because of a high rate of fraud by the use of false deeds. Additionally, a notary must immediately notify the Secretary of State if the notary’s sequential journal is stolen, lost, misplaced, destroyed, damaged or otherwise rendered unusable.



A deed does NOT have to be acknowledged to be valid, but must be acknowledged to be recorded.

VERIFICATION is an oath or affirmation made before a notary public that the content of an instrument is true. Notices of completion, nonresponsibility, and the statements used in filing a mechanic’s lien are among instruments that must be verified rather than simply acknowledged.

An **AFFIRMATION** is a solemn and legally binding declaration made under penalty of perjury by a person whose religious or other beliefs prohibit the taking of an oath.

An **AFFIDAVIT** is a verified written statement of facts.

A notary public does NOT acknowledge a document, but “witnesses” an acknowledgment.

D. DO NOT GIVE LEGAL ADVICE

A real estate salesperson or broker may not give legal advice, because the law is a highly complex and specialized profession that requires years of preparation and training. In the state of California, only a licensed attorney who is a member of the State Bar is allowed to practice law. A broker cannot give legal advice, unless he or she is also an attorney.

It is illegal for an agent, except an attorney, to draw up legal documents. For this reason, real estate brokers use preprinted fill-in forms. These standard forms are drawn up by licensed attorneys who are familiar with the legalities involved in contracts.

V. CHAPTER SUMMARY

An **estate** is an interest, share, right or equity in real estate, and can be either **freehold** (real property) or **less-than-freehold** (personal property). Freehold estates include fee simple estates or life estates.

A **fee simple** (or estate in fee) is the most complete form of ownership as it is of indefinite duration, freely transferable, and inheritable. If a **condition precedent** (before) or **condition subsequent** (future) **condition** is attached to a property's use, it is a **fee simple defeasible estate**.

A **life estate** is a freehold estate with a limited duration based upon someone's lifetime, with the property reverting back to the original owner (who holds an **estate in reversion**) upon the death of the life estate holder. If someone other than the owner is to receive title, that person is said to hold an **estate in remainder**.

A property owner may reserve a life estate for the duration of his or her lifetime. Although the estate is deeded to a designated party, he or she doesn't take possession until the death of the owner.

A **lease** or **rental agreement** is a less-than-freehold estate, where the tenant is given rights to use the real property for a period of time. It's personal property because no real ownership exists. An **estate for years** is a lease for a fixed period of time, agreed to in advance. Other less-than-freehold estates include **estates from period-to-period**, **estates at will**, and **estates at sufferance**.

Property can be sold or transferred by: 1) **deed** (grant deed transfers title); 2) **will** (witnessed or holographic); 3) **probate** (after death through the courts); 4) **intestate succession** (no will, divided among family or state); 5) **accession** (land increases through natural causes); 6) **occupancy** (**abandonment**, **adverse possession**, and **prescription**); and 7) **dedication** (gift to public).

A **grant deed** is a document that transfers title (evidence of the right to possess property). The method of holding title concurrently or in severalty is called **vesting**. The methods of tenancy include **severalty**, **tenants in common**, **joint tenancy**, **tenancy in partnership**, **community property**, and **community property with right of survivorship**.

Although **severalty** means separate ownership, title can be held by an individual or a corporation and can be willed or sold. When two or more people own property concurrently, it is called a **tenancy in common**, and it, too, can be willed or sold (although there are no survivorship or community property rights).

If there is the right of survivorship it is called **joint tenancy**, and that title cannot be willed. The four unities for joint tenancy are: 1) **title**, 2) **time**, 3) **interest**, and 4) **possession** (**Remember: "T-TIP"**).



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Tenancy in partnership refers to two or more people who are co-owners in a business, and can be a **general partnership** (losses and management duties shared) or **limited partnership** (losses limited and no management duties).

Community property refers to all the property acquired by a husband and wife during their marriage, and it can be willed, but if no heir exists, it goes to the remaining spouse.

Community property with right of survivorship allows the property to pass to the surviving spouse without probate administration, and the property will receive a full step-up basis, which means no capital gains tax to the surviving spouse if the property is sold.

All deeds should be **acknowledged** in the presence of a notary public and recorded with the county. **Generally, the deed recorded first has priority over any that follow.**

VI. TERMINOLOGY

A. Abandonment	K. Dedication	U. Life Estate
B. Accession	L. Delivery	V. Notary Public
C. Actual Notice	M. Encroachment	W. Prescription
D. Adverse Possession	N. Escheat	X. Probate
E. Affirmation, Affidavit, Verification	O. Freehold Estate	Y. Quitclaim Deed
F. Community Property	P. General and Limited Partnerships	Z. Recording
G. Condition Precedent	Q. Grant Deed	AA. Remainder
H. Condition Subsequent	R. Holographic Will	BB. Reversion
I. Constructive Notice	S. Intestate Succession	CC. Severalty
J. Corporation	T. Joint Tenancy	DD. Tenancy in Common
		EE. Witnessed Will

1. ___ The giving of private land by its owner for a public use; most commonly, the developer who gives it to a city.
2. ___ The reverting of private property to the state when there are no valid heirs.
3. ___ A voluntary association between two or more people to carry on a business with general and limited partners.
4. ___ A deed using the word "grant," or like words, containing warranties against prior conveyances and encumbrances. This is the most commonly used deed in California.
5. ___ An estate of indeterminable duration, e.g., fee simple or life estate.
6. ___ Undivided ownership of a property interest by two or more persons, each of whom has a right to an equal share in the interest and a right of survivorship.
7. ___ It is notice that is actually and expressly given or implied.
8. ___ A person authorized by the state to witness the signatures of persons executing documents, sign the certificate and affix the official seal.
9. ___ An event that must happen before title is passed.
10. ___ Documents filed with the County Recorder in such a way as are considered open notice to the world.
11. ___ Co-ownership of property by two or more persons who hold undivided interest, without right of survivorship. The interests need not be equal.

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12. ____ An unlawful intrusion onto another's property by making improvements to real property, e.g., a swimming pool built across a property line.
13. ____ A legal entity, sanctioned by the state, with rights and liabilities, distinct and apart from those of the persons composing it.
14. ____ The intentional and voluntary relinquishment of any ownership interest (such as an easement) or possession of real property.
15. ____ The means of acquiring interests in land, usually an easement, by continued use.
16. ____ A condition attached to an estate whereby the estate is defeated or changed through the failure or non-performance of the condition.
17. ____ A process of law by which the state lays out the correct succession of inheritance when a person dies without leaving a valid will.
18. ____ Many different types of statements made before a professional witness.
19. ____ An estate that reverts back to the grantor after the life of the tenant expires.
20. ____ The court procedure of proving that a will is valid.
21. ____ A method of acquiring title to real property, through possession of the property for a statutory period under certain conditions, by a person other than the owner.
22. ____ A deed to relinquish any interest in property, that the grantor may have, without any warranty of title or interest.
23. ____ An estate that is transferred to a third party (anyone other than the grantor) upon the death of the life estate holder.
24. ____ A formal expression of a person's desires, witnessed by others, as to the disposition of his or her property after death.
25. ____ Property acquired by husband and/or wife during marriage that is not acquired as separate property. Each spouse has equal rights of management, alienation and disposition.
26. ____ An estate of a single entity held by a single person alone.
27. ____ An estate or interest in real property that is held for the duration of the life of some certain person. It may be the person holding title to the estate or some other person.
28. ____ A handwritten expression of a person's desires as to the disposition of their property after death.
29. ____ Placing a document in the official records of the county.
30. ____ The act of receiving a deed.
31. ____ The acquiring of additional property.



CHAPTER 2

VII. CHAPTER QUIZ

1. Which of the following is a type of freehold estate?
 - a. Probate estate
 - b. Fee simple defeasible
 - c. Estate in fee
 - d. Estate in sufferance

2. Duke sold his property to Jane with the condition that Jane must never use it for any purpose other than as a private residence. However, after owning the property for several years, Jane decided to start a board and care facility for handicapped adults. What is the status of the estate?
 - a. It may revert to Duke because it is a fee simple defeasible estate
 - b. It may revert to Duke because it is a fee simple absolute estate
 - c. Duke has no claim because his condition is unlawful
 - d. Duke has no claim because the statute of limitations ran out on the condition

3. Which of the following is an example of a freehold estate?
 - a. The interest created by a trust deed
 - b. An estate at will
 - c. A life estate
 - d. A leasehold estate

4. A seven-year lease would be considered:
 - a. an estate for years.
 - b. personal property.
 - c. chattel real.
 - d. all of the above.

5. A tenancy at sufferance would occur when:
 - a. a tenant remains in the property after the end of an estate for years and continues to pay rent.
 - b. a tenant remains in the property after expiration of a lease without the owner's consent.
 - c. a landlord who delivers a 30-day notice to vacate the premises cannot find the tenant.
 - d. a landlord cannot obtain a writ of execution from the courts.

6. The owner of property adjacent to the water flow can acquire title to additional land by:
 - a. avulsion.
 - b. alluvium.
 - c. percolation.
 - d. accession.

ESTATES, TRANSFERS, AND TITLES

7. Dick and Jane, brother and sister, own an apartment building in joint tenancy. Dick needs \$10,000 to cover unexpected medical expenses, so he borrows the money from a lender and signs a trust deed on the property that was soon recorded in the public records. Forty-five days later, Dick dies. Which of the following is most correct?
- Jane is now responsible for the entire \$10,000.
 - Jane is now responsible for \$5,000.
 - Jane now owns the apartment building free and clear of her brother's \$10,000 debt.
 - If the loan is not repaid, the lender can foreclose only on Dick's 1/2 interest in the property.
8. Which of the following is needed to transfer property deeded "Mary Smith, a married woman"?
- Husband's signature only
 - Wife's signature only
 - Both husband and wife's signature
 - Husband's signature only, if the wife gives verbal consent
9. If a real estate agent advises a buyer how to take title to real property, he/she may be liable for:
- practicing law.
 - giving tax advice.
 - discrimination.
 - all of the above.
10. When selling his home to John, Bert negotiated a leaseback arrangement in order to continue renting and occupying the property for the next two years. John immediately placed the unrecorded grant deed into a safe deposit box for ultimate security. Two days later, Bert "sold" the home a second time to Julie who promptly recorded her deed. Which of the following is most correct?
- John is the rightful owner of the home provided he can produce this first deed to the property.
 - Julie is the likely owner of the property because she recorded her deed first.
 - Bert still owns the home until he vacates.
 - The title company will decide who is the rightful owner of the property.

ANSWERS: 1. c; 2. a; 3. c; 4. d; 5. b; 6. d; 7. c; 8. c; 9. d; 10. b



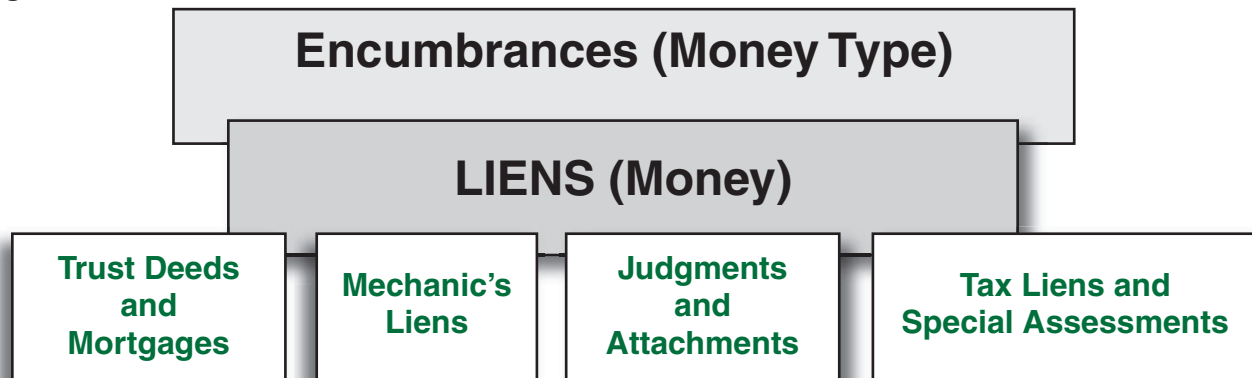
CHAPTER 3

Encumbrances

I. Encumbrances – An Overview

The term encumbrance is usually new to the beginner in real estate. An *ENCUMBRANCE* is a right or interest in real property other than an ownership or tenancy interest. It is a burden to the property that limits its use and may lessen its value. The two main types of encumbrances, shown in **Figure 3-1** and **Figure 3-3**, are: (1) liens and (2) items that affect the physical condition or use of the property.

Figure 3-1



All liens are encumbrances but NOT all encumbrances are liens.

When an owner encumbers more than one lot under a single lien, that owner has created a blanket encumbrance. A *BLANKET ENCUMBRANCE* is a voluntary lien (for money owed) placed over more than one parcel. A *RELEASE CLAUSE* releases portions of the property.

II. Liens (Money Owed)

A *LIEN* is a document that uses a property to secure the payment of a debt or the discharge of an obligation. It is money owed for one reason or another on a property. Liens include trust deeds or mortgages, tax liens, special assessments, mechanic's liens, judgments, and attachments.



CHAPTER 3

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Liens are either:

1. voluntary or
2. involuntary; and
3. specific or
4. general

A. VOLUNTARY AND INVOLUNTARY LIENS

VOLUNTARY LIENS are money debts that an owner agrees to pay. A lien is created when the buyer takes out a loan to finance the purchase of real estate. He or she voluntarily agrees to allow liens to be placed on the property.

A voluntary lien does NOT have to be recorded.

INVOLUNTARY LIENS are money obligations that create a burden on a property by government taxes or legal action because of unpaid bills. Both involuntary liens and voluntary liens must be paid, or assumed, in full before the owner can sell or refinance the property.

B. SPECIFIC AND GENERAL LIENS

SPECIFIC LIENS are liens against just one property. Property taxes assessed against real property automatically become a specific lien on only that property on **January 1** of each year.

GENERAL LIENS are liens on all the properties of the owner, not just one. Federal or state income taxes and judgment liens can become a general lien on all your real property.

C. TRUST DEED (Security Device – Voluntary and Specific)

A *TRUST DEED* is a written instrument that makes real property collateral for a loan. The evidence of debt is created by the promissory note that accompanies the trust deed. The trust deed pledges (hypothecates) the property as collateral, or security, for the note. In California, the trust deed is the usual security device for real property. In eastern states, the mortgage is the typical financing instrument. See Chapter 8 for details on trust deeds.

A promissory note (which accompanies the trust deed) is evidence of the debt. Trust deeds and mortgages are personal property.

D. MORTGAGE (Security Device – Voluntary and Specific)

A *MORTGAGE* is a lien that secures real property for the payment of a promissory note (debt). Mortgages are rarely employed in financing California homes, but because of their wide use in other states, they are emphasized in the real estate licensing examination. In California many people use the term “mortgage” to mean a property loan, but they usually are talking about trust deeds. Therefore, it is essential to understand the difference between mortgages and trust deeds since almost every property transfer in California is financed through a trust deed. Details on mortgages are discussed further in Chapter 8.

E. MECHANIC’S LIENS (Involuntary and Specific)

MECHANIC’S LIENS are liens that may be filed against a property by a person who was not paid after furnishing labor or materials for construction work on that property. The form used to



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enforce a mechanic's lien action must be recorded to be valid. A mechanic's lien is a lien against the property itself. The property cannot be transferred until the obligation is paid and the title cleared. This gives a subcontractor, craftsman or general contractor, employed by an owner, the right to protect his or her interest. The same right applies to material suppliers who furnish such items as lumber, plumbing or roofing supplies. To determine the start time, the mechanic's lien dates back to the commencement of the project.

A mechanic's lien is filed against a property and must be recorded to be valid.

1. Preliminary Notice

A **PRELIMINARY NOTICE** is a written notice that must be given before filing a mechanic's lien and within 20 days of supplying labor or services. This notice must be given, either by mail or in person, to the owner, general contractor and the lender. The notice must contain a general description of the labor or materials furnished, who supplied them and the person who contracted for these services. Failure to give the preliminary notice within 20 days does not restrict a supplier's right to file, but he or she may have allowed other claimants to file before him or her, which gives those claimants priority. As a matter of good practice, most suppliers include a preliminary notice as part of the original contract.

If a contractor files a mechanic's lien, it takes priority over all other liens except taxes, special assessments, and trust deeds filed prior to the "start of work."

2. Determining the Start Time for Mechanic's Liens

An important determination when considering a mechanic's lien is the **date that work started on the property**. Mechanic's liens, once recorded, have priority over all other liens, except property taxes, special assessments, and trust deeds. To lenders, this is critical because lenders want their trust deeds recorded before any work starts. Before they will lend money, lenders will conduct a physical inspection of the property to make sure no construction has started.

A mechanic's lien dates back to the time work began on the project.

A mechanic's lien (labor or materials) dates back to the beginning (commencement) of work on the project. This is known as the **SCHEME OF IMPROVEMENTS**.

3. Notice of Completion and Notice of Cessation (Limits Time to File)

A "Notice of Completion" (see Figure 3-2), in order to be valid, should be recorded by the owner within 10 days of completion, thereby limiting the general contractor to **60 days** to file a claim and subcontractors to **30 days**. This gives everyone constructive notice. Completion technically occurs when the owner accepts the finished work of the contractor, but in some instances, the job is never completed. **Guidelines have been set up by the state to allow suppliers of services and materials a filing period of up to 90 days if the owner doesn't file a valid notice of completion.** If one of these four alternatives occurs, the work is considered to be complete:

1. Occupation or use by owner after cessation of labor.
2. Acceptance of work improvements by owner.

Figure 3-2

<p>RECORDING REQUESTED BY</p> <p>AND WHEN RECORDED MAIL TO</p> <p>Name _____</p> <p>Street Address _____</p> <p>City & State _____</p>	<p>SPACE ABOVE THIS LINE FOR RECORDER'S USE</p>
--	---

INDIVIDUAL FORM

Notice of Completion

TO 1927 CA (3-75) Before execution, refer to title company requirements stated on reverse side. A.P.N. _____

Notice is hereby given that:

1. The undersigned is owner of the interest or estate stated below in the property hereinafter described.
2. The full name of the undersigned is _____
3. The full address of the undersigned is _____
4. The nature of the title of the undersigned is: In fee. _____
(If other than fee, strike "In fee" and insert, for example, "purchaser under contract of purchase," or "lessee".)
5. The full names and full addresses of all persons, if any, who hold title with the undersigned as joint tenants or as tenants in common are:

NAMES	ADDRESSES
_____	_____
_____	_____
_____	_____

6. The names of the predecessors in interest of the undersigned, if the property was transferred subsequent to the commencement of the work of improvement herein referred to:

NAMES	ADDRESSES
_____	_____
_____	_____
_____	_____

(If no transfer made, insert "none".)

7. A work of improvement on the property hereinafter described was completed on _____
8. The name of the contractor, if any, for such work of improvement was _____
(If no contractor for work of improvement as a whole, insert "none".)
9. The property on which said work of improvement was completed is in the City of _____
 _____, County of _____, State of California, and is described as follows:

10. The street address of said property is _____
(If no street address has been officially assigned, insert "none".)

Dated: _____ Signature of owner named in paragraph 2 _____
(Also sign verification below at X)

STATE OF CALIFORNIA, _____ } SS. _____
 COUNTY OF _____ }

The undersigned, being duly sworn, says: That _____ he is the owner of the aforesaid interest or estate in the property described in the foregoing notice; that _____ he has read the same, and knows the contents thereof, and that the facts stated therein are true.

SUBSCRIBED AND SWORN TO before me _____ Signature of owner named in paragraph 2 X _____

or _____

 Notary Public in and for said State

Title Order No. _____

Escrow or Loan No. _____

SEE REVERSE SIDE FOR
TITLE COMPANY REQUIREMENTS AS TO NOTICE OF COMPLETION

(This area for official notarial seal)



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3. A cessation of labor for 60 continuous days.
4. A cessation of labor for 30 continuous days if the owner files a "Notice of Cessation" with the county recorder's office.

A "Completion Bond" may be required by a lender to ensure that an insurance company will complete the job if the contractor cannot.

4. Filing Time (Limited)

The filing period is very important because the rights of a person filing a mechanic's lien are valid for only a short time. A suit can be filed later, but it would not automatically become a lien against the real property. A mechanic's lien may be filed any time after the preliminary notice and until 30 days after completion, if you are a supplier or subcontractor, and 60 days after completion if you are the general contractor. **If there is no notice of completion recorded for the project, all parties have 90 days after completion of the job to file.**

Filing time = 30 days (subcontractor), 60 days (general contractor), and 90 days (all parties, if no notice of completion).

5. Notice of Non-Responsibility (Must be Recorded and Posted)

An owner may file a notice of non-responsibility within 10 days of discovering that an unauthorized person is performing construction service on his or her property. A recorded and verified **NOTICE OF NON-RESPONSIBILITY** is posted on the property stating that the owner is not responsible for the work being done. This action releases an owner from any liability caused by the unauthorized activity and prevents suppliers from filing a valid mechanic's lien. If a tenant is installing carpet in your apartment without your authorization, filing a notice of non-responsibility with the county recorder's office protects you against the claims of the carpet supplier.

F. TAX LIENS (Specific or General Liens)

If any government tax is not paid, it may become a lien, through law or a court action, on real property. If the lien is not settled, the property can be sold to pay back-taxes. Tax liens are either: (1) specific liens or (2) general liens.

The difference between property taxes and special assessments is that special assessments are levied for the cost of specific local improvements, while property tax revenue goes into the general fund.

G. SPECIAL ASSESSMENTS

Local improvements are paid by the property owners in a given district through **SPECIAL ASSESSMENTS**. Improvements such as streets, sewers, street lighting and irrigation projects are generally paid for by the property owners who have benefited from the work. If these assessments are not paid, they become a lien against the property. Most special assessments are 10-to-30-year bonds. This allows the property owner a reasonable amount of time to pay them off. The property can be transferred without the assessment being paid. It is best that buyer and seller agree that the buyer will assume the assessment.

Developers finance roads, schools, and other off-site improvements with “Mello-Roos Bonds,” which become a special tax levied against homeowners. Sellers must disclose if their property is subject to a Mello-Roos lien.

H. JUDGMENTS (Involuntary and General Liens)

A **JUDGMENT** is a court decision determining the rights of the parties involved and the amount of compensation. A judgment can be appealed, and is good for ten years.

For a judgment to become a lien, an **ABSTRACT OF JUDGMENT**, or formal filing of the judgment, must be recorded. The judgment then becomes a lien upon all nonexempt property of the debtor. It also becomes a lien on all future property he or she later acquires until the lien is paid. A judgment lien is good for ten years. So, if any property is transferred within this ten year period, the lien must first be paid off. Under additional court action, the judgment holder may be able to force the debtor to sell the real property to pay off the lien.

1. Small Claims Court

At this point, it is important that you understand the use of the Small Claims Court. Anyone can take someone else to court regarding civil cases for a \$6 filing fee plus the fee for serving the subpoena. Neither party is allowed to be represented in the courtroom by legal counsel. The current maximum amount of a judgment is \$7,500. This limit will be adjusted periodically by the state legislature to meet inflationary trends. Night court is also available in some districts, making this process even more accessible. You should be aware, however, that for a plaintiff, the judge’s decision in a small claims action is final. The defendant, though, has the right of appeal. This is an excellent way to settle a dispute with a minimal amount of time and expense.

I. TERMINATION OF JUDGMENT LIEN

Most judgment liens are terminated by the satisfaction of the judgment. A **JUDGMENT IS SATISFIED** by the payment of money or the return of property. A notice that the judgment has been satisfied should be filed with the clerk of the court. It clears the lien from the record. Sometimes certain properties may be released from the judgment, but only with the judgment holder’s consent. This partial release enables an owner to sell a property to satisfy a part of the judgment. A judgment may also be terminated if a bond is posted or if the judge grants a new trial.

J. ATTACHMENT (Court-Seized Property)

ATTACHMENT (LIEN) is a process of the law that creates a lien. It gives custody of real or personal property to the court to assure payment of a pending lawsuit in that county. This is to assure that there will be enough property to satisfy the judgment should the plaintiff prevail. The **PLAINTIFF** is the person filing a court action to obtain an attachment lien. The **DEFENDANT** is the person who is being sued. During an unlawful detainer action for collection of past due rents, for instance, it may be advantageous for a plaintiff to obtain an attachment against the defendant. This type of lien is good for three years, and is extended only if the plaintiff wins the court case. Use of the attachment lien is not very common because there are many rules and formalities involved in obtaining this type of lien. This is another area that requires the help of an attorney.



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An attachment is a prejudgment process that creates a lien, good for three years, which does NOT terminate on the death of the property owner.

K. LIS PENDENS (“Lawsuit Pending”)

LIS PENDENS is the recording of a notice with the county recorder’s office warning all persons that a certain type of lawsuit is pending concerning a particular property. Attorneys often file a lis pendens before a court date is set in order to stop the transfer of the property. A lis pendens places a cloud on the title, and is effective when filed. The property is not marketable until the lis pendens is removed.

A lis pendens is notice of a pending lawsuit that may affect (cloud) title to real property based on the lawsuit outcome. It remains on the public record (is effective) until the lis pendens is removed, the action is dismissed, or final judgment is rendered.

L. SHERIFF’S SALE (Court Order to Sell – Execution)

A *WRIT OF EXECUTION* (sale) is a court order requiring the sale of certain property to satisfy a judgment. The writ of execution extends the lien against the real property for one year. If the judgment has already been recorded as a lien on the property, the writ of execution will not create a new lien. The county sheriff, or other local officials, are then ordered to secure and sell the real or personal property to satisfy the lien.

If a person refuses to pay off the judgment, the sheriff’s sale is the next step. A *SHERIFF’S SALE* is the forced sale of a debtor’s property to satisfy a judgment under a writ of execution. In California, the sheriff’s sale is the usual method of forcing the sale of property to pay off a judgment.

Mechanic’s liens and any previously recorded judgments have priority over paying the expenses of the sale. If these expenses are paid, a first trust deed is next to be satisfied. Any amount left over is applied toward a second trust deed and any subsequent liens, in the order of their recording, until the proceeds are exhausted.

M. INJUNCTION (Court Order to Stop)

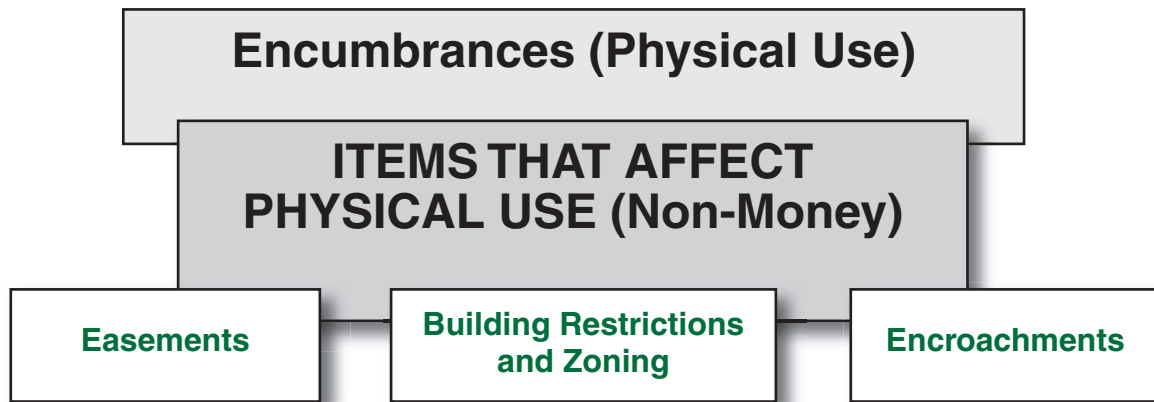
An *INJUNCTION* is a court order which can restrict a party from doing an act such as violating private deed restrictions.

Example: Mr. Crawford has been burning rubbish on his own property. The neighbors have complained and have secured a court order, ordering Mr. Crawford to stop the offending practice. The court order is called an injunction.

III. Items That Affect Physical Use (Non-Money Encumbrances)

A. ITEMS THAT AFFECT PHYSICAL USE

ITEMS THAT AFFECT PHYSICAL USE are non-money encumbrances that affect the physical use of real property. They include: easements, building restrictions and zoning (such as setback requirements), and encroachments and leases, which are conditions that limit the physical use of the property (see **Figure 3-3**).

Figure 3-3

Some encumbrances affect the physical use of the property. They are:

1. Easements
2. Building Restrictions and Zoning
3. Encroachments
4. Leases (see Chapter 6)

1. Easements (The Right to Use Another's Land)

An easement is the right to use another's land; it is an "interest," but NOT an estate. An easement is a non-money encumbrance, but NOT a lien.

An **EASEMENT** is an interest in land owned by another person consisting of the right to use or control the land, or an area above or below it, for a specific, limited purpose. The right to enter is called **INGRESS** and the right to exit is **EGRESS**. Included in this definition is the right to profit from the easement, such as the right to take minerals, oil and gas.

Easements are of two types: (1) easements appurtenant and (2) easements in gross.

a. Easement Appurtenant (Runs With the Land)

An **EASEMENT APPURTENANT** is an easement "created for and beneficial to" the owner of adjoining or attached lands. An easement is real property, not personal property, but it is not an estate. In this case there are two parcels of land, with one owner giving another owner an easement. The **DOMINANT TENEMENT** is the land that obtains the benefits of an easement. **Figure 3-4** is an illustration of a driveway easement. Owner A's land is the dominant tenement and Owner B's land is the servient tenement.

The owner of the servient tenement CANNOT terminate the easement; it must "serve" the dominant tenement.

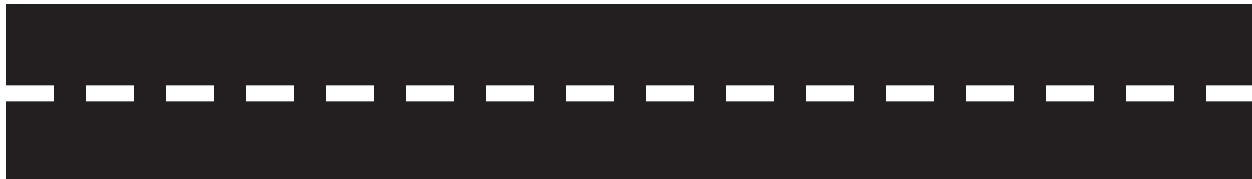
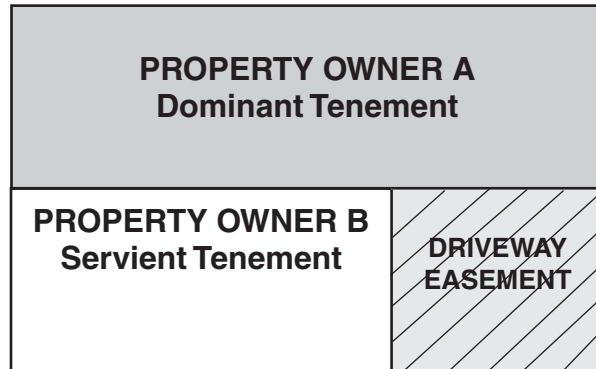
Example: Able has leased Blackacre for a ten-year term. Baker owns Whiteacre, which is adjacent to Blackacre. Baker requests an easement over Blackacre from Able. Able, the tenant, can legally grant such a right for an indefinite period. A lessee can grant an easement over leased property, but only for the term of the lease. After the lease expires, the easement is no longer valid.



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Figure 3-4

Property owner B owns the land the easement crosses but cannot block or hinder in any way the right of property owner A to use the driveway for access to his property.



A **SERVIENT TENEMENT** is the land that gives the easement (use of the land) for the benefit of another. The appurtenant easement belongs to the land and is transferred with the land. This easement cannot be transferred separately from the land.

The dominant tenement and the servient tenement do NOT need to physically abut (touch) each other.

b. Easement in Gross (Does Not Benefit Adjoining Landowner)

An example of an easement in gross would be an easement for the telephone company (utility company) to enter the property to run telephone lines.

An “appurtenant easement” goes with the land, whereas an “easement in gross” goes to a person.

An **EASEMENT IN GROSS** is not attached to any particular land or dominant tenement. It is an easement created for the benefit of others who do not own adjoining or attached lands. It is a personal property right. Even though it is a personal right, it is still a servient tenement. An example of an easement in gross would be a utility company or person obtaining the right to run natural gas lines across your land. In this instance your land would become a servient tenement.

Example: Landowner Jacobs granted the telephone company the right to erect telephone poles on his land. This easement in gross is an **encumbrance**.

Other not-so-common easements are: rights to take water, wood or minerals; rights to transact business or conduct sports upon the land; rights to receive light, air or heat from the land, and the right to use a wall as a common party wall.

An easement that does not specify a special area for a right-of-way is also valid. A property owner could give the right to cross his or her land and not limit how or where a person would have to cross. This is known as an **UNLOCATED EASEMENT**.

A “license” is permission to use another’s property for a certain purpose and period of time. Unlike an easement in gross, it can be revoked at any time.

c. Creation of an Easement

Easements are created in three basic ways:

1. Express Grant (in writing)
2. Implication of Law (implied easement)
3. Long Use (prescription)

1. EXPRESS GRANT (IN WRITING), AS IN A DEED OR CONTRACT. If a property is transferred as part of the deed, an easement appurtenant to the land would be included in the grant. The same thing is accomplished by transferring a property, but **reserving an easement** over the land. A written contract can create an easement between the parties. For legal protection, this contract should be acknowledged and recorded.

Example: Daniel, who owned two pieces of adjacent land, sold one of them to Charles, reserving an easement for himself at the time. Daniel soon left the state for 21 years, during which time he did not use the easement. When Daniel finally returned to the state, he discovered that the easement was still valid and enforceable.

2. IMPLICATION OF LAW (IMPLIED EASEMENT). If an easement is implied in a transfer, or if it is necessary for use of the land, then the easement is said to be implied by law. The right to use the land for obtaining minerals implies that you have the right of surface entry in order to extract the minerals.

EASEMENT BY NECESSITY (LANDLOCKED) is an easement granted by the court if it is absolutely necessary for access. If a person is sold property that landlocks that person, he or she may acquire an easement by necessity. When the grantor transfers a portion of his or her land that leaves the grantee totally surrounded by the grantor (transferor), the grantor can be forced to give an easement of access to the grantee. An easement by necessity does not have to be the most convenient way of entering the property. If the grantee later acquires another access to his or her property, the easement by necessity is then terminated.

3. LONG USE (EASEMENT BY PRESCRIPTION). **PRESCRIPTION** is an easement to continue using land by virtue of having used it for a long period of time.

Possession for five continuous years can create a prescriptive easement, as long as the use is:

1. Open and notorious;
2. Uninterrupted for five years;
3. Under a claim of right or color of title, and
4. Hostile (without permission of the owner).

An easement obtained by prescription can be terminated if not used for five years.



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d. Transfer of an Easement

Easements are transferred automatically if they are easements appurtenant. Easements in gross can be transferred only by express agreement, providing the easement is not made to a specific individual. An easement should be recorded. If it is not recorded, and the purchaser does not have knowledge of an easement, then the easement may not be considered to have been transferred with the property.

e. Termination of an Easement

Easements may be terminated in several ways:

1. EXPRESS RELEASE – Any written agreement can terminate an easement, but the usual form is a quitclaim deed or release.

Only the owner of the dominant tenement can release (terminate) an easement, usually by recording a quitclaim deed.

2. MERGER OF DOMINANT AND SERVIENT TENEMENTS – An easement is automatically terminated when the dominant and servient tenements merge into a common, or single, ownership. The easement can be created again if any part of the property is later transferred to a “separate owner.”

3. EXCESSIVE USE – The courts have held that excessive use of an easement that increases the burden on the servient tenement may be forfeited through a court injunction. If the dominant tenement refuses to correct the excessive use, and misuses of the easement can be established, the easement can be terminated. An example would be a dominant tenement owner allowing the entire neighborhood to use the easement as a through-street.

4. ABANDONMENT AND NON-USE – If there is an obvious intent of an easement holder to abandon his or her easement, then that person may lose the easement through court action. In this way, an easement gained through prescription may be extinguished if non-use exists for a period of five continuous years.

Non-use can only terminate an easement created by prescription.

5. DESTRUCTION OF SERVIENT TENEMENT – When a governing body, by exercising the right of eminent domain, takes servient tenement property for its own use, the dominant tenement easement is considered automatically terminated.

2. Building Restrictions (Public and Private)

PRIVATE DEED RESTRICTIONS limit the use or occupancy of the land. A typical restriction limits the types of buildings on a given piece of land to single family residences. Also, a restriction might require future construction to meet specific standards. For example, all houses erected on a property must be at least 5,000 square feet.

There are three types of private building restrictions: Covenants, Conditions, and Restrictions (CC&Rs). They are usually included in the deed at the time the property

is subdivided, or may be created by a written contract and are listed in the recorded “Declaration of Restrictions.” Their main purpose is to keep use of the land uniform throughout certain tracts of land. Subdivisions and condominiums usually include deed restrictions as a method to promote the aesthetics and economics of the project. These private deed restrictions and bylaws are usually recorded separately, and are only referenced in the original grant deeds.

Private restrictions on the use of land may be created by private land use controls, written agreement, or a developer’s general plan restrictions for a subdivision.

a. Covenants (Promise Broken, Sue for Damages)

A **COVENANT** is a promise to do or not to do a certain thing. For instance, a property could sell with a covenant stating that the property shall never be used to sell alcoholic beverages. If the covenant is broken, the usual court remedy would be an action for money damages. A court may also grant an injunction requiring compliance with the covenant.

Only SOME covenants “run with the land,” but ALL conditions “run with the land.”

b. Conditions (More Stringent Than Breaking a Covenant – Can Lose Title)

A **CONDITION** is a future and uncertain event which must happen to create an obligation to extinguish an existing obligation. **The penalty for not following the set conditions is the reversion of the property to the grantor.** This penalty is so stiff that most courts will treat a condition as a covenant unless the terms are clearly stated in the deed or other contract. For a complete discussion of conditions, refer back to Chapter 2.

A condominium’s CC&Rs may prohibit “for sale” signs, but an owner may place a reasonably sized “for sale” sign on the property.

If a condominium owner breaches a “condition” in the CC&Rs, this would be more stringent than breaching a covenant.

With regard to CC&Rs, violating a condition can result in loss of title to property, which is more stringent than breaching a covenant.

c. Public/Governmental Restrictions (Zoning)

PUBLIC RESTRICTIONS are limits made by governmental agencies, usually by cities and counties, in the form of zoning.

“Public restrictions” promote health, safety, morals, and general welfare of the public. This is the use of “police power.”

Private restrictions are made by the present or previous landowners and are created only for their benefit. On the other hand, **zoning restrictions** are created by and for the benefit of the general public to insure its health, safety, comfort, and morals.

ZONING is the restriction on the use of private property by the local government agency. Zoning dictates how the property can be used, the **setbacks required**, and the height limit on any structures.



CHAPTER 3

If public restrictions (zoning) and private restrictions (CC&Rs) differ, the more stringent or rigid will apply.

For example, if a developer sets a deed restriction of **at least** 15,000 square feet to a lot, but zoning only allows 10,000 square feet per lot, the deed restriction is more restrictive and would prevail. This area is covered in depth in Chapter 12 under “Government Control.”

d. Race Restrictions (Illegal)

In 1961, the California State Legislature enacted a law that voided all restrictions as to race. Any race deed restriction before that law or after that law is now void. It is illegal to restrict the right of an individual to sell, rent, lease, use or otherwise occupy a property because of race or membership in a certain ethnic group.

Race restrictions on a property by a grantor (past or present) are unenforceable and illegal. The courts can remove race restrictions from a deed.

3. Encroachments (Three Years to Act)

As stated earlier, an *ENCROACHMENT* is the wrongful, unauthorized placement of improvements or permanent fixtures on property by a nonowner of that property. You must pursue the right to have an encroachment removed within three years or lose your right. If someone encroaches on your property, he or she is limiting the use of your property.

Example: If your neighbor builds a driveway over your property, it is considered an encroachment, which is a form of “trespass.” You have three years to sue your neighbor to have the encroachment removed.

Often fences, walls, or buildings may extend over the recognized boundary line. The encroaching party may possibly gain legal title to the property through adverse possession, or legal use through an easement by prescription, if there is legal justification. In any event, an encroachment may legally limit the use of your property.

IV. Homesteading Your Residence (Protects Against Judgment Liens)

A lease is an encumbrance and a homestead is NOT considered an encumbrance.

Although a homestead **is not an encumbrance**, it is appropriately discussed at this point. A *HOMESTEAD* is a special provision of the California law that allows homeowners to protect their homes from forced sale to satisfy their debts, within certain limits. There are two types of homesteads: (1) Head of the household and (2) Federal Homestead Act of 1862, whereby the government encouraged settlements (gave land free to those who made certain improvements—this is not discussed here). It is basic to our society that a homeowner should have some protection against losing his or her home because of debts. A homestead consists of the house and adjoining dwellings in which the owner resides. This can include condominiums, farm and life estates.

A homestead cannot include “unimproved” land such as vacant lots or a residence under construction.

A. DECLARATION OF HOMESTEAD

The first \$75,000 of a home’s value may NOT be used to satisfy a judgment against a head of household.

A **DECLARATION OF HOMESTEAD** is the recorded document that protects a homeowner from foreclosure by certain judgment creditors (see **Figure 3-5**). This protects you for \$75,000 if you are the head of a family. Persons who are mentally or physically disabled, over the age of 65, or 55 or older with a specific low income, are entitled to protection for up to \$150,000. Any resident who does not qualify under one of these conditions has a homestead valued at \$50,000. If the equity exceeds the exemption, the home may be sold to satisfy creditors, but the exemption amount is protected for six months for reinvestment in another home.

A homestead does NOT protect a homeowner against foreclosure on a trust deed, mechanic’s lien, or lien filed prior to the filing of the homestead.

In order for a declaration of homestead to be valid, there are certain requirements that must be met. Omissions of any one of these will make the homestead void. The requirements are:

1. A statement showing the claimant is the head of a family and stating the name of the spouse. “Head of family” may be anyone who lives in the home and provides for any relative living in the same house.
2. A statement that the claimant is residing on the premises and claims it as his or her homestead.
3. A description of the premises and an estimate of cash value.
4. It further provides that the declaration of homestead may need to contain a statement as to the character of the property; that no former declaration has been made and that it is within the limits prescribed by law.

The homeowner has time to file a declaration of homestead prior to court approval for a writ of execution. As part of the judicial process, the defendant must be informed of his or her right to file a declaration of homestead. This law, in effect, reduces the necessity of filing a homestead declaration until the homeowner is in financial trouble.

A recorded homestead would have the least impact on property taxes.

B. TERMINATION OF HOMESTEAD

The usual methods for termination of homestead are the sale of the property or the filing of a declaration of abandonment.

A homestead may be terminated by a **DECLARATION OF ABANDONMENT**. The declaration of abandonment must be acknowledged and recorded by the involved parties. A sale or other conveyance of the property also terminates the homestead. The removal or destruction of the dwelling does not terminate the homestead. The reason for abandoning

Figure 3-5

RECORDING REQUESTED BY AND WHEN RECORDED MAIL TO	
NAME STREET ADDRESS CITY STATE ZIP	
(SPACE ABOVE THIS LINE FOR RECORDER'S USE)	

HOMESTEAD DECLARATION

I, _____
(Full Name of Declarant)

do hereby certify and declare as follows:

(1) I hereby claim as a declared homestead the premises located in the City of _____
County of _____ State of _____ commonly known as _____
_____ Street Address _____

and more particularly described as follows: [Give complete legal description]

(2) I am the declared homestead owner of the above declared homestead.

(3) I own the following interest in the above declared homestead:

(4) The above declared homestead is [strike inapplicable clause] my principal dwelling,
[strike inapplicable clause] the principal dwelling of my spouse, and
[strike inapplicable clause] I am my spouse is currently residing on that declared homestead.

(5) The facts stated in this Declaration are true as of my personal knowledge.

Dated: _____, 19_____
(Signature of Declarant)

STATE OF _____ }
COUNTY OF _____ } ss.

On _____ before me, _____
(Name, title of officer, e.g., "Jane Doe, Notary Public")

personally appeared _____

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature

(Seal)

WOLCOTT'S FORM 756—HOMESTEAD DECLARATION —Rev. 1-93
(Office Class 3)

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This standard form is intended for the typical situations encountered in the field indicated. However, before you sign, read it. Fill in all blanks, and make whatever changes are appropriate and necessary to your particular transaction. Consult a lawyer if you doubt the form's fitness for your purpose and use.

a homestead is to allow the homeowner the privilege of obtaining another homestead on a new residence.

A homestead is terminated by 1) Declaration of Abandonment or 2) the sale of the homesteaded property.

While the typical homeowner need not file a declared homestead to enjoy basic homestead protection, homeowners who are in financial trouble, or who expect to be in financial trouble, probably should file a homestead declaration, just to be on the safe side.

V. CHAPTER SUMMARY

An **encumbrance** is a burden to a property that limits its use by either 1) money owed (liens) or 2) items that affect the physical use of the property (non-money). All liens are “encumbrances,” but not all encumbrances are liens. A **blanket encumbrance** is a voluntary lien placed over more than one property, and usually has a **release clause** for one or more of the parcels.

A **lien** is a document that uses a property to secure the payment of a debt or the discharge of an obligation. Liens are either 1) **voluntary** or 2) **involuntary**, and 3) **specific** or 4) **general**.

Trust deeds and **mortgages** (mortgages are rare in California) are security devices that make property security for a debt and are considered personal property. The accompanying **promissory note** is the evidence of the debt.

If the people who supply labor or materials for construction on a property are not paid, they can file a **mechanic’s lien** against that individual property. It is a **specific and involuntary lien** and, once recorded, has priority over all other liens except taxes, special assessments, and trust deeds filed prior to the “start of work.” Before filing a mechanic’s lien, **Preliminary Notice** must be given (within 20 days of supplying labor or services).

It is important to establish the starting time and completion date of the work or materials supplied. A **Notice of Completion** should be recorded by the owner within ten days of completion, or a **Notice of Cessation** within 30 days of cessation of labor.

If a person is unauthorized to do construction on a property, an owner needs to file and post a **Notice of Non-Responsibility** on the property, releasing him or her from liability and preventing suppliers from filing a valid mechanic’s lien.

Property taxes and mechanic’s liens are **specific liens**, meaning liens against just one property, whereas income taxes and judgments are **general liens**, covering all the properties of an owner. A **judgment** is a **general and involuntary lien** against all real property in the county in which the judgment is recorded, and is good for ten years. A **satisfaction of judgment** is made by payment of money or return of property and clears the lien from the record.



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An **attachment (lien)**, which is good for three years, creates a **specific and involuntary lien** on one property to assure payment of a pending lawsuit. A **lis pendens** is a notice of a pending lawsuit that affects (**clouds**) title and remains on the public record until the lis pendens is removed, the action is dismissed, or final judgment is rendered. If a person does not pay off a judgment, he or she may be forced to sell the property in a **sheriff's sale** under a court order called a **Writ of Execution**.

Items that affect **physical use** of a property are **non-money encumbrances** and include: 1) **easements**, 2) **restrictions**, 3) **encroachments**, and 4) **leases**.

An **easement** is the right to enter, use and exit another person's land for certain purpose. If it runs with the land it is an **easement appurtenant**. The **dominant tenement** is the land that benefits from the easement that the **servient tenement** gives up. An **easement in gross** benefits others who do not own adjoining or attached lands (like a utility company running a gas line across a property).

Easements can be created by 1) **deed** (writing), 2) **implication of law** (implied easement or easement by necessity), or 3) **prescription** (long use). They can also be terminated in several ways, including: 1) **express release**, 2) **merger** of dominant and servient tenements, 3) **excessive use**, 4) **abandonment and non-use**, and 5) **destruction of servient tenement**.

Restrictions can be private deed restrictions, or public restrictions. **Covenants, conditions, and restrictions (CC&Rs)** are private building restrictions. **Public restrictions** are limits made by governmental agencies and are meant to promote health, safety, morals, and general welfare of the public (**police power**). **Zoning** is a public restriction dictating how property can be used, including setback requirements. An **encroachment** is the wrongful, unauthorized placement of improvements or permanent fixtures on a property by a non-owner, which must be removed by the owner within three years.

A **homestead** is not an encumbrance, but a special provision of California law that allows homeowners to protect their homes from forced sale to satisfy their debts. A homestead is terminated by: 1) **declaration of abandonment**, or 2) **the sale of the homesteaded property**.

VI. TERMINOLOGY

A. Abstract of Judgment	K. Easement Appurtenant	U. Notice of Non-Responsibility
B. Attachment	L. Easement in Gross	V. Plaintiff
C. Blanket Encumbrance	M. Encroachment	W. Preliminary Notice
D. Conditions	N. Encumbrance	X. Restrictions
E. Covenant	O. General Lien	Y. Satisfaction
F. Declaration of Abandonment	P. Homestead	Z. Servient Tenement
G. Declaration of Homestead	Q. Lien	AA. Sheriff's Sale
H. Defendant	R. Lis Pendens	BB. Specific Lien
I. Dominant Tenement	S. Mechanic's Lien	CC. Trust Deed
J. Easement	T. Mortgage	DD. Writ of Execution

1. ____ A right, limited to a specific use, that one party has in the land of another.
2. ____ A statutory protection of a home from the claims of certain creditors and judgments up to a specified amount.
3. ____ Anything that affects or limits the fee simple title to, or value of, property, e.g., mortgages or easements.
4. ____ A notice, recorded and posted by the property owner to relieve them of responsibility for the cost of unauthorized work done on his or her property or materials furnished.
5. ____ A limitation on the use of real property. These limitations fall into two general classifications: public and private. Zoning ordinances are public, while a clause in the deed requiring the roof to be made of Spanish red tile would be a private limitation.
6. ____ The process by which real or personal property is seized by the court for the purpose of assuring payment.
7. ____ A form of encumbrance that usually makes specific property security for the payment of a debt.
8. ____ Discharge of a mortgage or trust deed from the records upon payment of the debt. Make sure you receive a Deed of Reconveyance to prove that you paid off the deed of trust.
9. ____ A limiting restriction stating that upon the happening or not happening of some stated event, the estate shall be changed in some manner.
10. ____ A promise to do or not to do a particular thing.
11. ____ A person against whom a civil or criminal action is taken.
12. ____ An instrument, recognized by law, by which property is hypothecated to secure the payment of a debt. This instrument is not commonly used in California, but is popular on the east coast.
13. ____ In a court action, the one who sues; the complainant.
14. ____ A recorded document of the essential provisions of a court judgment.
15. ____ A lien, created by statute, which exists against real or personal property in favor of persons who have performed work or furnished materials for the improvement of real property.
16. ____ A legal document by which a borrower pledges certain real property as collateral for the repayment of a loan. In addition to the buyer and seller, there is a third party to the transaction known as a trustee.
17. ____ A formal statement that protects the head of the household from losing the property to the claims of creditors, usually up to a set maximum amount.
18. ____ A lien, usually a trust deed in California, covering more than one property of the borrower.
19. ____ A notice that informs or warns owners, lenders and general contractors that subcontractors have been hired, or materials have been supplied to a particular job site.
20. ____ A statement declaring the intent to give up a homestead, usually to declare a homestead on a new residence.



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- 21. ____ A court ordered sale of real or personal property by the sheriff pursuant to the execution of a judgment.
- 22. ____ The construction of improvements on the property of another.
- 23. ____ An easement for the benefit of the owner of an adjacent parcel of land.
- 24. ____ Real property that benefits from an easement.
- 25. ____ A writ to carry out a court order, usually arising from a judgment.
- 26. ____ A property that is burdened by an easement.
- 27. ____ An easement for the benefit of a person or utility company rather than for the benefit of adjacent landowners.
- 28. ____ A notice filed or recorded for the purpose of warning all persons that the title to certain real property is in litigation.
- 29. ____ A lien such as a tax lien or judgment lien that attaches to all property of the debtor rather than a specific property.
- 30. ____ A lien that attaches to a specific property rather than all the property of the debtor.

VII. CHAPTER QUIZ

- 1. When a project of improvement on real property has been completed and the owner has not filed a "notice of completion," how many days do claimants have to file mechanic's liens?
 - a. 30 days
 - b. 60 days
 - c. 90 days
 - d. Unlimited
- 2. The difference between property taxes and special assessments is that:
 - a. assessment liens are always subordinate to property tax liens.
 - b. assessment liens can only be levied by local improvement districts.
 - c. foreclosure of assessment liens can only be achieved by court foreclosure.
 - d. special assessments are levied for the cost of specific local improvements, while property tax revenue goes into the general fund.
- 3. A lis pendens:
 - a. may affect title to the property, based upon the results of the lawsuit.
 - b. allows real property to be reassessed when it is sold.
 - c. means "and wife."
 - d. none of the above.
- 4. Which of the following is a court order restricting a party from doing an act such as violating private deed restrictions?
 - a. Writ of execution
 - b. Writ of possession
 - c. Injunction
 - d. Quiet title action

5. Which of the following will terminate an easement?
- a. Dominant tenant records a quitclaim deed
 - b. Servient tenant records a grant deed
 - c. The owner of the servient tenement records a grant deed
 - d. The owner of the dominant tenement records a quitclaim deed
6. Landowner Jacobs granted the telephone company the right to erect telephone poles on his land. Which of the following best describes this situation?
- a. An encroachment
 - b. An encumbrance
 - c. An appurtenance
 - d. Accession
7. Daniel, who owned two pieces of adjacent land, sold one of them to Charles reserving an easement for himself at the time. Daniel soon left the state for 21 years during which time he did not use the easement. When Daniel finally returned to the state he discovered that:
- a. the easement was terminated after 5 years of non-use.
 - b. the easement was still valid and enforceable.
 - c. the owner of the servient tenement had died leaving Daniel with no easement rights at all.
 - d. easements cannot be created by "reservation."
8. A condominium's CC&Rs prohibit "for sale" signs. The owner may:
- a. sue the condo association.
 - b. place a reasonably sized "for sale" sign on the property.
 - c. not place a "for sale" sign on the property.
 - d. none of the above.
9. If a condominium owner breaches a "condition" in the CC&Rs this would be:
- a. enforced by the local building department.
 - b. the same as violating a health code regulation.
 - c. more stringent than breaching a covenant.
 - d. the same as breaching a public restriction.
10. Which of the following would have the least impact on property taxes?
- a. Selling price
 - b. Market value
 - c. A recorded homestead
 - d. Tax deferment

ANSWERS: 1. c; 2. d; 3. a; 4. c; 5. d; 6. b; 7. b; 8. b; 9. c; 10. c